

ISRAEL KETCHAM.

FEBRUARY 11, 1860.—Reported from the Court of Claims, committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

ISRAEL KETCHAM *vs.* THE UNITED STATES.

1. The petitions of the claimant and amended petition.
2. Original documentary evidence in the case transmitted to the House of Representatives.
3. Petitioner's brief.
4. United States solicitor's brief.
5. Opinion of the court adverse.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this fifth day of December,
[L. s.] A. D. 1859.

SAMUEL HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable the Court of Claims in session assembled:

The petition of Israel Ketcham, of the city of New York, respectfully states that your petitioner had the misfortune of being engaged, as a sub-contractor, in the erection of fortifications on Dauphin island, at the entrance of Mobile bay, during the years of 1819 and 1820. In the year 1819 your petitioner contracted with Nimrod Farrow, then in the city of New York, to take to Mobile a large number of mechanics and laborers, with provisions and other supplies, tools, implements, and other materials for building said fortifications. Suffice it to say, that all that your petitioner agreed with Farrow to do was done, which the vouchers and documents left with the Clerk of the House of

Representatives, and directed to be handed over to the honorable the Court of Claims, will more particularly show; and happy, indeed, would your petitioner be if he could say the same justice had been meted out to him that he had dealt unto others. In 1824, Farrow acknowledged as being due from him to your petitioner seventeen thousand five hundred and twenty-seven dollars and eighty-seven cents. To that amount should have been added five hundred dollars that your petitioner paid, at the special request of Farrow, to Col. Edward Clark, who went out to Mobile as agent for Farrow, and had no money for his outfit; also, for supplies for ship Orris, at Mobile, two hundred and thirty dollars and seventeen cents; also, for services rendered at Mobile after 9th March, 1820, one thousand dollars; the same amount for services rendered in 1824, one thousand dollars; making an amount due from Farrow to your petitioner, 3d of March, 1825, the sum of twenty thousand two hundred and fifty-nine dollars and four cents. The three last sums named were not included in the action of the last Congress, and if entertained by the honorable the Court of Claims, proof will be introduced to establish their validity. Farrow, in acknowledging your petitioner's account, rendered him in 1824, did, after due and strict examination of the different charges, stipulate in writing to pay your petitioner as far as the appropriations of Congress should enable him to do so. March 3, 1825, Congress passed an act releasing Farrow & Harris from all claims which government had made on them; also to reinstate them in possession of all real and personal estate which they had assigned to government as collateral security for advances made them, with an addition of seventy-three thousand seven hundred and forty-seven dollars and seventy-eight cents in cash. All this property and money, by the act of March 3, 1825, was appropriated, first, for the payment of sub-contractors, and after that, if any overplus, to be equally divided between Farrow & Harris. The act of the 3d of March, 1825, also enjoined duties on the Secretary of War which is in proof that he, at least in part, failed to discharge, in consequence of which your petitioner has been deprived of receiving a large amount of money that has been justly due him over thirty years. The last action by the government on your petitioner's claim was by the last Congress. A bill was passed by the Senate for your petitioner's relief, for seventeen thousand five hundred and twenty-eight dollars and fifty-five cents, not the full amount of principal, and no interest, which your petitioner thinks should be allowed. The Senate bill was sent to the House of Representatives, had its first and second reading, referred to the Committee on Claims, who, after a lengthy and close examination, reported it back to the House with a recommendation that the bill do pass, but it did not pass, and but for one reason, as your petitioner believes, without a dissenting voice; it was not reached to have its final passage. Your petitioner has neither partners, agents, nor lawyers to act for him, but will rely on the kindness and indulgence of the court and solicitor for any informalities of his, that a decision may be made in accordance with justice and equity. And, as in duty bound, will ever pray.

ISRAEL KETCHAM.

STATE OF NEW YORK, *City of New York*, ss:

I, Elijah H. Riker, notary public, duly commissioned and sworn, dwelling in the city of New York, hereby certify that on the day of the date hereof, before me personally appeared Israel Ketcham, to me known, who, being duly sworn, did depose and say that he has read the foregoing petition by him subscribed, and knows the contents thereof, and that the same is true to the best of his knowledge and belief.

ISRAEL KETCHAM.

In witness whereof, I have hereunto set my hand and notarial seal, and the said Israel Ketcham has subscribed his name hereto, at the city of New York, this second day of June, A. D. eighteen hundred and fifty-five.

ELIJAH H. RIKER, *Not. Pub. N. Y.*

IN THE COURT OF CLAIMS.

ISRAEL KETCHAM *vs.* THE UNITED STATES.

To the honorable the judges of the United States Court of Claims:

The petition of Israel Ketcham, of the city of New York, respectfully sheweth: That in the year 1818 Messrs. Farrow & Harris entered into a contract with the United States for the construction of a fortification at Dauphin island, at Mobile, and in the year 1819 the said Farrow & Harris also entered into a contract with your petitioner to furnish labor and materials for that purpose; and, in compliance with said contract, he took out from New York a number of mechanics and laborers, with provisions, implements, and materials, to Dauphin island, and expended in the fulfilment of said contract the sum of \$22,528 ^{$\frac{5}{100}$} , of which sum there has been paid to him only the sum of \$5,000, leaving a balance due and unpaid of \$17,528 ^{$\frac{5}{100}$} , as will more fully appear by the account hereto appended, marked A.

To said account the said Farrow, on the 10th day of March, 1824, appended the following acknowledgment, viz:

“Mr. Israel Ketcham has this day presented the within account, and can produce vouchers for the same if it should be required. I do hereby promise to Mr. Israel Ketcham, in the event of the government allowing the claim of Messrs. Farrow & Harris, contractors for the erection of fortifications on Dauphin island, his claim so far as it is right and just, and I do not know, at the present moment, anything to the contrary; but his claim is justly due to him, which shall be paid to him or his representatives, in the event of the government leaving it in the power of me to do so.

“Given under my hand this 10th day of March, 1824.

“N. FARROW.”

Your petitioner would further show that the erection of said fortification was subsequently abandoned by the government, and several

acts were subsequently passed by Congress for the relief of the contractors, the said Farrow & Harris, with the view of indemnifying them for the losses consequent upon the abandonment of the work by the United States; and on the third day of March, 1825, an act of Congress was passed, by which it was enacted as follows:

"Be it enacted, &c., That the Secretary of War cause to be withdrawn and dismissed a suit which is now pending by the United States against Nimrod Farrow and his securities, for moneys advanced him by the United States as one of the contractors for erecting a fort on Dauphin island; and that the bond on which the suit was instituted be cancelled.

"SEC. 2. And be it further enacted, That the Secretary of War cause to be delivered up and released, by proper conveyances, to Nimrod Farrow, contractor for erecting a fort on Dauphin island, all liens or securities which the United States may hold on property, real or personal, of the said contractor.

"SEC. 3. And be it further enacted, That the proper accounting officers of the Treasury Department pay unto Nimrod Farrow, contractor for erecting a fort on Dauphin island, or to his legal representatives, the sum of seventy-three thousand seven hundred and forty-seven dollars and seventy-eight cents.

"Provided, That the said Nimrod Farrow, before he shall receive any of the personal property to be delivered as aforesaid, and before he shall be entitled to receive the money above mentioned, shall enter into a bond to the Secretary of War with security to the acceptance of said Secretary, in the penal sum of \$120,000, conditioned that the said Nimrod Farrow shall appropriate the net proceeds of the personal property, and the money to be received, towards the payment of the debts contracted by Farrow & Harris, or either of them, or any other person or persons contracting under said Farrow & Harris for supplies furnished and services rendered in or about the erection of said fortification; and that, if there shall be any surplus after paying the said debts contracted as aforesaid, said Farrow shall pay to said Harris, or his legal representatives or assigns, his just proportion of said surplus; which bond shall be deposited by the Secretary of War, and it shall be the duty of said Secretary, upon the application of any of the parties interested therein, and satisfactory proof of the failure of said Nimrod Farrow to fulfil the conditions thereof, to cause the said bond to be prosecuted for the benefit of the party or parties making such application, and of such other person or persons as may have an interest in said bond.

"SEC. 4. And be it further enacted, That an inventory be taken of such personal property as shall be returned to the said Farrow under the provisions of this act, and an estimate of its value be made, under such regulations as the Secretary of War may prescribe; and that there be paid to said Farrow such difference as exists between the value of the personal property at the time the same was taken possession of by the government and its return, together with the value of the personal property destroyed or lost while the same was in the possession of the government, except the same was lost or destroyed by the act of God.

"SEC. 5. And be it further enacted, That the several sums to be

paid by the provisions of this act be paid out of any money in the treasury not otherwise appropriated."

Your petitioner would further show, that a bond was taken by the Secretary of War, in pursuance of the provisions of said act, and that Gilbert C. Russel was one of the sureties in said bond, and that he signed the same upon the express condition that he was to receive the property or money in lieu thereof, and pay the debts, which amounted to \$112,000; but the Secretary of War dismissed a suit which was then pending against Farrow & Harris on the part of the United States, and paid to the said Farrow & Harris the sum of \$73,000, but absolutely refused to return the property, out of the proceeds of which, and with the said \$73,000, the debts were to be paid; and upon a suit brought by a creditor of said Farrow & Harris, claiming the benefit of said act of Congress against said surety, he was discharged, on the ground that said Secretary had failed to execute the provision of said act in relation to said property.

Your petitioner further shows, that soon after the passage of said act he caused an application to be made on his behalf to the Secretary of War, to institute a suit on said bond against the principal and sureties in the same for his benefit, and at the same time filed with the Secretary the evidence of his claim as a sub-contractor of said Farrow & Harris, but the said Secretary neglected and refused to cause any suit to be instituted on said bond, or to adopt any measure for the application of said money and property towards the payment of the debt of your petitioner.

Your petitioner therefore claims that the provision of the act of Congress for the payment of the just and acknowledged debt of your petitioner, as a sub-contractor, was defeated by the wrongful act of the Secretary of War, both by his refusal to cause a suit to be instituted on said bond, and by his refusal to transfer said personal property according to the provisions of said act; and that his said refusal so to transfer said personal property in obedience to said act of Congress deprived the said petitioner of all remedy against the said sureties; and your petitioner has been wholly unable to collect his said debt, or any part of the same, from said Farrow & Harris, they being wholly insolvent, and no part of the same has since been paid.

Your petitioner therefore prays your honors to inquire into the matters aforesaid, and to grant such relief as to law and justice may appertain.

Adverse reports were made on this claim in the House of Representatives at the 2d session of the 20th Congress, (Rep. No. 19,) and the 1st session of the 23d Congress, (No. 495.) And in the Senate his petition was referred to the Committee on Claims at the 2d and 3d sessions of the 27th Congress, but no report made thereon.

At the 1st session of the 33d Congress, the Committee on Claims of the Senate made a favorable report on said claim, and a bill for the relief of your petitioner was passed for the payment of said sum of \$17,528 55, and by the resolution of the House of Representatives the same referred to this honorable court.

A.

Messrs. Farrow & Harris to Israel Ketcham, Dr.

25 barrels of corn meal, at \$5.....	\$125 00
7....do....prime pork, at \$17 50.....	122 50
7....do....beef, at \$14.....	98 00
3....do....do...mess, at \$16.....	48 00
5....do....pilot bread, at \$8.....	40 00
15....do....navy bread, at \$5.....	75 00
6 dozen chepping, at \$27.....	162 00
2....do....shovels, at \$12.....	24 00
1....do....spades, at \$12.....	12 00
3....do....knives and forks, at \$2.....	6 00
3....do....iron spoons, at \$1.....	3 00
1....do....tin cups, at \$1 50.....	10 50
5....do....tin plates, at \$2 50.....	15 00
3....do....mattresses and pillows, at \$36.....	108 00
1....do....hoes, at \$12.....	12 00
2 hedge-hogs, with apparatus, at \$20.....	40 00
1 fish seine, at \$60.....	60 00
6,638 feet white pine timber, at \$25.....	165 96
24 Rorum hats, at \$3.....	72 00
Box for the same, at \$1.....	1 00
194 pairs men's shoes, at \$1 50.....	291 00
2 boxes for same, at \$1.....	2 00
2 sets of harness, at \$15.....	30 00
3½ dozen wheelbarrows and gudgeons, at \$3 50.....	147 00
1 cart, at \$75.....	75 00
4 pairs cart wheels, at \$40.....	160 00
1 anchor, 600 cwt., at 10 cents per lb.....	67 00
2 pumps, boxes, &c., complete, at \$20.....	40 00
2 hhds. blocks, at \$200.....	200 00
156 lbs. iron, cwt., qr., lbs., at 8 cents.....	12 48
19 bales hay, average 4 cwt. 2 qrs. 0 lbs., at \$1 50.....	128 25
500 lbs. oakum, at 15 cents.....	75 00
57 cwt. 1 qr. 16 lbs. cordage, at 12 cents.....	753 76
1 8-inch cable, 12 cwt. 0 qrs. 0 lbs., at 8 cents.....	107 52
1 4-inch hawser, 2 cwt. 0 qrs. 0 lbs., at 9 cents.....	20 16
15 fathoms 13-inch cable, 7 cwt. 2 qrs. 0 lbs., at 9 cents.....	67 20
2 kegs twist tobacco, 288 lbs, at 40 cents.....	115 20
1 keg hard tobacco, 135 lbs., at 30 cents.....	39 90
1 barrel roll tobacco, 168 lbs., at 30 cents.....	58 80
Barrel, at 37½ cents.....	37
1,624 feet timber framed for house, at 18 cents.....	292 00
Ship Orris, at \$1,600.....	1,600 00
For repairing agreed to be paid on her.....	348 75
For 160 passages from New York to Mobile, at \$30..	4,800 00
Wages paid for 100 men 2 months, average \$30 each	6,000 00
Board for the same, \$12 each, 2 months.....	2,400 00

Compensation for my own services	\$3,000 00
Discount on \$5,000 received	75 00
Expenses for going to Virginia after the same.....	80 00
1 dozen fancy chairs, delivered at Red Bluff, at \$3 50..	42 00
Cash paid Seth Belknap	300 00
	<hr/>
	22,528 55
	<hr/>
Cr. by cash received	\$5,000 00
Balance due I. Ketcham	17,528 55
	<hr/>
	22,528 55
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Articles of agreement made and entered into this 29th day of March, 1819, by and between Richard Harris, of Dauphin island, contractor for constructing fortifications on said island, and Israel Ketcham and Jacob G. Vandenberg, under the firm of Ketcham & Vandenberg. The said Ketcham & Vandenberg agree and contract to make or cause to be made and delivered at Dauphin island, all the bricks which the said Harris may require to complete and finish the fort which he has engaged to construct; and the said Ketcham & Vandenberg do hereby further agree that the bricks shall be well made and well burnt, and that they shall be such as the engineer or agent of the United States government shall approve and receive, and that the moulds in which the said bricks shall be moulded shall be made to measure ten inches in length, five inches in breadth, and three inches in thickness, and shall not be altered from that size except by mutual consent of the contracting parties. And the said Ketcham & Vandenberg do hereby further agree that they will deliver or cause to be delivered unto the said Harris, at Dauphin island aforesaid, one hundred thousand bricks, on or before the 1st day of August next, and one hundred thousand more in all August aforesaid, and three hundred thousand monthly thereafter until the 1st day of April, 1820, and from that time until the fortifications are completed eight hundred thousand shall be delivered monthly, or as many as the said Harris may want to keep his masons employed. The said Harris agrees and contracts to do everything reasonable to assist and aid the said Ketcham & Vandenberg in their operations to complete and execute their contract with him, and in case of his succeeding in getting possession of the red bluffs on the east side of Mobile bay, that he will permit the said Ketcham & Vandenberg to hold possession thereof until they shall have completed their contract, and at the expiration of which time the said Harris agrees to pay the said Ketcham & Vandenberg the value of their improvements, provided it does not exceed four thousand dollars, and provided that the said Ketcham & Vandenberg shall pay annually a reasonable rent for the said bluffs to the said Harris; and the said Harris further agrees and contracts to have two piers extended and built thirty feet into the water, as temporary places to receive bricks on until the 1st of November next, at which

time he agrees to build a wharf or wharves, as Captain Gadsden or his successor shall think proper to have built or erected, for the safe delivery of the said bricks. The said Harris agrees to receive the said bricks from or on the said wharf or wharves; he also agrees and contracts to pay the said Ketcham & Vandenberg eleven dollars for each and every thousand bricks that they deliver in conformity with this contract. The said Harris further agrees to furnish the said Ketcham & Vandenberg with provisions and such other articles as shall be wanted to execute the above written contract; and also to furnish, if required, five thousand dollars in cash, between this and the 1st of August next, provided the said Ketcham & Vandenberg shall give good security for the said advance. It is understood by and between the contracting parties that all the advances made, either in cash or in provisions or other things, shall be refunded within nine months from the time such advances shall have been made; also that the bricks are to be paid for on delivery, if required.

Given under our hands and seals on Dauphin island, this 29th day of March, 1819.

 _____ [L. S.]
 _____ [L. S.]
 _____ [L. S.]

In presence of—

It is further understood that the said Ketcham & Vandenberg are to hold possession of such part only of the said red bluffs as the parties may agree on, and in case of a disagreement the principal engineer for this station is to determine how much is necessary to carry on the brickery, cut timber, and cultivate for their men and cattle; and that the said Harris is to be consulted concerning all the improvements to be paid for by him, and if his title should prove bad, he is to pay for such improvements only as he shall hereafter direct.

RICH'D HARRIS. [L. S.]
 ISRAEL KETCHAM. [L. S.]
 JACOB G. VANDENBERGH. [L. S.]

In presence of—

J. CLINE.
 A. GREEN.

It is agreed and understood by and between Richard Harris and Ketcham & Vandenberg, that the said Vandenberg, agreeably to his wish, is released from the contract, and that the said Ketcham is to deliver one-half of the bricks agreeably to the times and upon the terms mentioned first in this contract.

RICH'D HARRIS. [L. S.]
 ISRAEL KETCHAM. [L. S.]
 JACOB G. VANDENBERGH. [L. S.]

Test:

J. CLINE.
 BOSWELL ALSOP.

I. KETCHAM *vs.* THE UNITED STATES.

Admitted in evidence.

J. D. McPHERSON,
Deputy Solicitor.

WASHINGTON, July 3, 1854.

The act of Congress of 1825, for the relief of Harris & Farrow, directing that \$73,000 should be paid to them, and all their property in Alabama, which had been mortgaged or conveyed in trust, estimated at \$12,000, should be returned to them or paid for, unless it had been destroyed or lost by the act of God, never was executed. The act required Harris & Farrow to give bond and security in the sum of \$120,000 that the proceeds of the property, with the \$73,000, should be applied to the payment of any debts contracted by them or their agents for work done or materials delivered, &c., &c. This was done, and I signed the bond on condition that I was to receive the property, or money in lieu thereof, and pay the debts, which amounted to \$112,000. The Secretary of War, in accordance with the requirements of the act, dismissed a suit then pending against Harris & Farrow, and paid the \$73,000, but absolutely refused to give an order for a return of the property, out of the proceeds of which their debts were to be paid. I was sued by Roland Clapp, who claimed \$6,000, and was held to bail; from the order to hold me to bail I was discharged, upon the ground that the Secretary of War had failed to execute the provisions of the act, whereupon Clapp dismissed his suit. Had the Secretary complied with this, the most important provision of the act, the just debts of Harris & Farrow would have been paid forthwith; but, by the ignorance, or something worse, of the Secretary of War, he positively refused to execute this part of the law, and the debts due for "work done and materials delivered" were not paid. Having had my right arm badly broke, and the wrist joint dislocated, not only makes my writing bad, but painful; therefore if the committee desire explanations or further information, and will send for me, it will be an easy matter to give it verbally.

This statement is made at the request of the Committee on Claims of the Senate as communicated to me by Mr. Spencer.

GILBERT C. RUSSELL.

COUNTY OF WASHINGTON, *District of Columbia*, ss:

Personally appeared before me, C. W. C. Dunnington, a justice of the peace in and for the county aforesaid, Gilbert C. Russell, who, being duly sworn, says the foregoing statements are correct and true.

G. C. RUSSELL.

Sworn to and subscribed before me this 5th July, 1854.

C. W. C. DUNNINGTON,
Justice of the Peace.

Admitted in evidence.

JOHN D. McPHERSON,
Deputy Solicitor.

STATE OF MICHIGAN, *Lenawee County, ss:*

Be it remembered that on this 2d day of October, A. D. 1851, personally came before me, Lucius G. Sholes, a justice of the peace in and for said county, Jacob Ketcham, of the said county of Lenawee, to me well known, who, having been duly sworn, deposeth and saith: That in the fall of 1819 this deponent was living at Ithica, Tompkins county, New York, and entered into a contract with his brother, Israel Ketcham, of the city of New York, to go to Dauphin island, at the outlet of Mobile bay, for the purpose of making brick for the fortifications then erecting at that place for the government of the United States, under a contract with one Nimrod Farrow, to whom the said Israel Ketcham was a sub-contractor; that the deponent left home about the 1st of October, in the year aforesaid, and arrived in the city of New York about the 10th of the same month, where he found his said brother engaged in fitting and repairing the ship called the "Orris," which he had purchased for the purpose of transporting the hands, implements, provisions, &c., to the said island for the prosecution of the said work; that this deponent was present, and assisted in loading said vessel with a large quantity of provisions, consisting of beef, pork, flour, corn meal, ship and navy bread, potatoes, beans, and other vegetables; also a quantity of tools and implements, such as spades, shovels, and axes, carts, cart wheels, wheelbarrows and wheelbarrow wheels, and a quantity of shoes, hats, tobacco, and hay in bales; also new rigging for a number of small vessels which were calculated to have been built at Fowl river for the purpose of carrying materials to the said island for completing the said works; and that a number of persons were also hired and shipped on said vessel as mechanics and laborers for the said works, to the number, as this deponent thinks, of 150, who were to receive as wages from twenty to fifty dollars per month; and that the said vessel sailed from the port of New York, this deponent thinks, about the 1st of November, in the year aforesaid, and arrived at said island after a passage of 23 days; and that soon after the landing of mechanics and laborers aforesaid many of them deserted the service of the said Israel Ketcham, without making him any compensation whatever for their passage or board, much to the damage of the said Israel Ketcham, as this deponent verily believes; that this deponent assisted in keeping the books of his said brother, and was present at the payment of said hands, and was personally knowing to the fact of all of them who remained and labored on the said works receiving full pay and satisfaction of the said Israel Ketcham; and that, at about the expiration of two months from the arrival of said ship and

cargo at the said island, the said Nimrod Farrow came to the said island, which was a considerable time after he had engaged with my said brother to be there, as this deponent heard him, the said Farrow, declare, and this deponent heard the said Farrow express his entire satisfaction with the general management and prosecution of the said works by the said Israel Ketcham; and the said Farrow further observed that he (Ketcham) should lose nothing by his said detention or by the contracts the said Ketcham had made for the prosecution of said works, and also that all engagements of the said Farrow with the said Ketcham should be satisfactorily arranged and settled with the said Israel Ketcham. And this deponent further saith that soon after the arrival of the said Farrow he purchased the ship Orris of the said Israel Ketcham, together with all the remainder of the said stock of provisions, tools, implements, and rigging, but at what price and upon what terms this deponent knows not. And further this deponent saith not.

JACOB KETCHAM.

Sworn and subscribed before me at Tecumseh this 2d day of October, A. D. 1851.

LUCIUS G. SHOLES,
Justice of the Peace.

STATE OF MICHIGAN, *Lewawee County Clerk's Office, ss:*

I hereby certify that Lucius G. Sholes, esq., whose name is subscribed to the annexed and foregoing certificate of deposition, was at the date thereof, and still is, a justice of the peace in and for said county, duly qualified and authorized by the laws of the State to take the same, and to all of whose official acts as such justice of the peace full faith and credit are due and ought to be given; and that I am well acquainted with the handwriting of the said Lucius G. Sholes, and verily believe his signature subscribed to the annexed and foregoing certificate of deposition is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the circuit court for said county, at Adrian, this 2d day [L. S.] of October, A. D. 1851.

CHARLES CHANDLER,
Clerk of said court and county.

DISTRICT OF COLUMBIA, *City of Washington, ss:*

On this 18th day of December, 1856, personally appeared before the subscriber, a justice of the peace within and for the city and District aforesaid, Israel Ketcham, who, being duly sworn according to law, declares that the papers and documents in relation to his claims filed with his petition to the Congress of the United States, and by the House of Representatives ordered to be referred to the Court of Claims, are lost, or a portion of them, and those papers purporting to be copies of original papers which have been lost or mislaid, now pre-

sented by him to said Court of Claims, are true and perfect copies of the originals, both in words and figures; that the loss of said original papers was without fault or negligence on his part, and for which he is not responsible. The deponent further declares that he presented his account and claim to Nimrod Farrow sometime during the year of 1824; that its correctness was then acknowledged by said Farrow, who then promised to pay the amount thereof to the deponent should an appropriation by Congress be made which would enable him to do so, as set forth in paper marked A. The deponent further states that an act passed Congress, and was approved on the 4th March, 1825, appropriating money and making provision for the payment of the claims of the sub-contractors engaged on the works under the aforesaid Nimrod Farrow and — Harris, as mentioned and particularly referred to in the before-mentioned papers; and in consequence of the aforesaid act your deponent called upon the said Nimrod Farrow, at his residence, in Fauquier county, in the State of Virginia, and demanded of said Farrow payment of the amount of his said claim, viz: \$17,528 55, and that said Farrow then made no objection to the amount thereof, or to its payment, except his inability to pay it, alleging that he had disposed of all the money appropriated by the act of Congress aforesaid which had come into his hands, but that money enough would soon be received by him to pay all just demands, &c. The deponent further declares that, placing no further reliance upon the promises of said Farrow, and that no money in payment of his said claim was likely to be realized from that source, proceeded to obtain the necessary vouchers to establish his claim and to meet any objection that might arise against its validity; that subsequently his said account, with all the original depositions and proofs in support of it, were placed in the hands of the Hon. C. C. Cambreleng, then a member of the House of Representatives, with his petition to Congress for relief; that in the various stages of the proceedings of Congress in relation to his said claim, his original papers and documents, or a portion of them, have been lost, and that he has made every effort in his power to recover the same, without effect, and that the same have not since been in his possession. Your deponent further declares that before he presented to Congress his said petition and original papers and proofs, he made, or caused to be made, and has preserved, true and accurate copies thereof, which copies so made at that time are the identical papers and copies which he now presents to the Court of Claims.

The deponent also further declares that Jacob Ketcham, his brother, John Hogan, William Thomas, and Seth Belknap, are dead, and that Walter Case, as he was informed about a year since by his wife, was imbecile in body and mind—he was then eighty years old or thereabouts—and further, that Thomas Ketcham is also dead.

ISRAEL KETCHAM.

Sworn to and subscribed before me the day and year first above written.

F. S. MEYER,
Justice of the Peace.

STATE OF NEW YORK, *City of New York*, ss :

Walter Case, late of Newburgh, county of Orange, and State of tenth Congress, from Orange county, in said State, the full term of New York, attorney and counsellor of law, now of Fishkill, county of Dutchess, and State aforesaid, having been duly sworn, doth depose and say, that he served as a representative in the six-two years; that during all that term, and ever since, he has been intimately acquainted with Israel Ketcham, the petitioner in the annexed petition named, and believes him to be an honest man, who would disdain to commit a fraud on the government or an individual. Deponent was at the house of said Ketcham, in the city of New York, on or about the first of November, 1819, when said Ketcham was about embarking with his family on board a ship then lying at anchor near the house of said Ketcham, in the harbor of New York, for the purpose of proceeding to Dauphin island, at or near the entrance of Mobile bay, to fulfil a contract which he, the said Ketcham, had made as sub-contractor with Nimrod Farrow, for building fortifications for the government on Dauphin island, at or near the entrance of Mobile bay.

Deponent had a clear view, from the windows of said house, of said ship, and the transactions on board the same, and saw large quantities of provisions, tools, and men going on board of said ship, from time to time, at the instance of said Ketcham, and for the purpose of performing his said contract with the said Nimrod Farrow, as this deponent was at that time informed by the said Ketcham; and said Ketcham was to make the brick for said fortifications, or procure them to be made, and find provisions for the men; which said deponent believes to be true. And that said Ketcham did proceed to Dauphin island with said ship, and arrived safely with his provisions, tools, and family, and forthwith entered upon the performance of his said contract, and actually performed said contract to the satisfaction of the said Farrow and the government of the United States, as deponent was at that time informed, and believes. During the first session of the sixteenth Congress deponent was in the habit of corresponding with said Ketcham after his arrival in Mobile bay; said Ketcham's wife was deponent's sister, and deponent, on that account, felt a deep interest in his success, and that he should not lose by his said contract with Nimrod Farrow, as aforesaid. During the first session of the sixteenth Congress deponent became satisfied, from his intercourse with members of Congress and the heads of departments, that no further appropriations would ever be made by Congress for erecting said fortifications on Dauphin island, and deponent wrote to the said Ketcham to that effect, according to the best of his recollection. After giving this information, deponent, at the request of said Ketcham, spoke to John C. Calhoun, then Secretary of War, to know if said Ketcham could place any reliance on government to pay his just demands against Farrow, under his contract, in case of a suspension of building the fortifications on Dauphin island. Mr. Calhoun's reply was, that the government would not be responsible to a sub-contractor, unless an act of Congress should be passed for their

relief, yet the just claims of said Ketcham would be protected as far as it would be in the power of the department to do so, or words to that effect.

On the 3d day of March, 1825, as this deponent has been informed and believes, an act was passed appropriating (\$73,748 78) seventy-three thousand seven hundred and forty-eight dollars and seventy-eight cents for the payment of sub-contractors for erecting said forts, but not one cent of said appropriation was ever paid to the said Ketcham, as this deponent has been informed and believes. Deponent *knows* that the Hon. Parmenis Adams, a member of Congress, acted as agent for the said Israel Ketcham after the said act was passed providing for the pay of sub-contractors, as aforesaid, under the said Farrow & Harris, because the said Parmenis wrote to this deponent at Newburgh, from Washington, in the absence of the said Ketcham, saying that he had applied to Mr. Barber, the Secretary of War at that time, in behalf of said Ketcham, to have suits brought against the said Nimrod Farrow and his securities, in behalf of the sub-contractors aforesaid, and that Mr. Barber assured him that said Ketcham should be paid; and, finally, that said Adams enclosed to deponent the paper which fully established the claim of the said Ketcham against the said Farrow and the government, by Farrow's acknowledging, in writing, the amount due him, the said Ketcham, under his own signature, as deponent was informed at that time, and verily believes to be true. Deponent has examined a copy of an account, which is hereunto annexed, rendered by said Ketcham against said Farrow & Harris, and acknowledged by said Farrow as being justly due to said Ketcham, amounting to between seventeen and eighteen thousand dollars, and has no doubt the amount so charged is correct, and should be paid, with interest; and deponent also saith, that such was the intimacy existing between this deponent and the said Ketcham, and so intimately was deponent acquainted with the business of the said Ketcham at that time, and the state of his pecuniary affairs, that deponent verily believes it would have been impossible for the said Ketcham to have received the amount due him from the said Farrow without the knowledge of this deponent, or any considerable portion thereof; and deponent also saith that he verily believes that the whole amount admitted by the said Farrow in his acknowledgment, hereunto annexed, as being then due to said Ketcham, is still due and owing to him, and that great injustice will be done to him if it should not be forthwith paid by the government. Deponent knows, and states with confidence, that owing to the failure of said Farrow and the government to perform their promises and undertakings aforesaid with the said Ketcham, he was greatly embarrassed in his circumstances, having paid out large sums of money for said ship, provisions, wages, and tools, without remuneration. Deponent further saith, that he has examined with great care and attention the annexed voucher, marked A, and believes it to be a true copy of the original account of the said Ketcham transmitted to deponent by said Parmenis Adams aforesaid, and which the said Nimrod Farrow had acknowledged in writing to be justly due to said

Ketcham, as aforesaid, as appears from said voucher A. And further this deponent saith not.

WALTER CASE.

Sworn before me the 25th day of June, 1851.

WM. L. MORRIS,
Com'r of Deeds, &c.

Admitted in evidence.

JOHN D. McPHERSON,
Deputy Solicitor.

I hereby certify that I am a physician, residing in the town of Fishkill, county of Dutchess, State of New York; that I know Walter Case, and occasionally prescribe for him, and I do not think him capable of giving testimony on any subject, in consequence of the decay of his mental faculties from age.

THEODORE V. W. ANTHONY.

FISHKILL, *Dutchess County, November 28, 1857.*

DUTCHESS COUNTY, *ss:*

On the thirtieth day of November, one thousand eight hundred and fifty-seven, before me personally came Theodore Van Wyck Anthony, to me known to be the individual whose signature is signed above, and he, the said Anthony, did acknowledge that he signed the same, and that the statement made above his signature is correct to the best of his belief.

ALFRED W. LOMAS,
Justice of the Peace.

Sworn on the day and date above written.

IN THE COURT OF CLAIMS.

ISRAEL KETCHAM *vs.* THE UNITED STATES.

The within affidavit is regarded as bringing the witness Walter Case within the rule laid down by the court in the cases of Nock, Ketcham, and Guilbean, and it is therefore agreed that his *ex parte* affidavit in this case may be read in evidence.

JNO. D. McPHERSON,
Deputy Solicitor.

To the honorable the Senate and House of Representatives of the United States of America, in Congress assembled:

The petition of Israel Ketcham, of the city of New York, respectfully states that your petitioner had the misfortune of being engaged

as a sub contractor in the erection of fortifications on Dauphin island, at the entrance of Mobile bay, during the years 1819 and 1820. In the year 1819 your petitioner contracted with Nimrod Farrow, then in the city of New York, to take out to Mobile a large number of mechanics and laborers, with provisions and other supplies, tools, implements, and materials for building the said fortifications.

Your petitioner, in the faithful fulfilment of his agreement, proceeded to transport a large number of mechanics, and other laborers, provisions and other materials, from the city of New York to Mobile, and in every respect complied with his agreement with the said Farrow. In consequence, however, of the failure of the said Farrow to make the advances to your petitioner which he had stipulated to do in his said agreement, your petitioner, in order to accomplish what he had undertaken, found himself compelled not only to spend his last dollar, but to incur heavy responsibilities. Your petitioner not only furnished the articles agreed to be supplied by him, but went out in person to Dauphin island, and spent a considerable part of the years 1819 and 1820 in efforts to aid the contractors in the completion of their work. The supplies furnished by your petitioner in pursuance of his agreement amounted in the whole to \$22,528 87, on which the only amount ever received by your petitioner from the said Farrow & Harris, or either of them, was \$5,000, and \$500 of that amount was paid to Colonel Edward Clark at the particular request of said Farrow, and omitted to be charged in your petitioner's bill rendered to said Farrow, leaving a balance due your petitioner of \$18,028 87. Such is the origin and nature of your petitioner's claim. And if the personal sufferings of your petitioner could enhance his claims to the favorable consideration of your honorable bodies, he might truly add, that the sums so expended and responsibility incurred by your petitioner occasioned nearly his utter ruin—depriving him of the little property he then possessed, embarrassing his affairs, and injuring his health for years, on account of fatigue and exposure in a sickly climate, and leaving him with a family, to struggle against all the evils of poverty. The Congress of the United States became aware of the difficulties and losses sustained by your petitioner, in common with other sub-contractors under Farrow & Harris, and with a view, as your petitioner believes, of providing for cases similar to that of your petitioner, on the third day of March, 1825, passed a law appropriating the sum of \$73,747 78 for the benefit of sub-contractors who had just and *bona fide* claims. Unfortunately, however, for your petitioner, the law provided that the same should be paid in the first instance to Nimrod Farrow, to be by him expended in the discharge of the claims of the sub-contractors, the law requiring the said Farrow first to give satisfactory bonds to the honorable the Secretary of War that the money should be faithfully supplied by said Farrow. Bonds were given, and \$58,747 78 of the money was received by said Farrow; but instead of being applied in satisfaction of the claims of those who had contributed their time and money to the erection of the said fortification, was expended, to a very great extent, in a manner and for purposes totally foreign to the intention and positive direction of the act, and the Congress who passed it. Your petitioner

was ready and prepared with the proofs of his claim—his account having been examined by Nimrod Farrow in March, 1824—and Farrow then provided in writing to pay the balance of your petitioner's account out of such money as might be appropriated by the government; and in pressing his claims upon Congress, said Farrow would frequently refer to the sufferings of your petitioner and the justness of his claims, in order that Congress might be more strongly induced to make an appropriation to alleviate the sufferings of your petitioner, notwithstanding which your petitioner received not one cent of the amount so appropriated and paid.

In consequence of such misapplication of the moneys appropriated, your petitioner, by his agent, Hon. Parmenio Adams, who was member of Congress, applied, under the provisions of said act, to the Secretary of War, soliciting the payment of your petitioner's claim, or requiring him to cause suits to be instituted on the bond, in the mode prescribed in said act. Mr. Barbour, the Secretary of War, told Mr. Adams that it was unnecessary to institute suits against Farrow and his sureties, as by the act allowing Farrow pay for slaves in Alabama, and other additional allowances, there would be more money coming to Farrow, in addition to the moneys that had already been paid him, than would be required to pay your petitioner and other just claims growing out of the demands of sub-contractors; and, that your petitioner might rest easy, his demands should be paid, and that no more money should be paid to Farrow until your petitioner's claim was satisfied. Your petitioner then supposed he would very shortly have the amount of his demand, and believes that the honorable the Secretary of War had no doubt but that his promises made to your petitioner's agent to pay your petitioner was made in good faith, for two reasons: first, the honorable the Secretary of War no doubt thought that the money would be forthwith coming from additional credits which he believed Farrow entitled to; and secondly, if means were not procured in that way, then your petitioner would be paid out of any money in the treasury not otherwise appropriated, on application to Congress, as Congress, by their act of March 3, 1825, and their bond of indemnity, assumed the payment of petitioner's claim. Your petitioner further respectfully states that he conscientiously believes that government is bound in equity and justice to pay your petitioner the amount due your petitioner at the time of his settlement with Farrow, with interest from the 3d March, 1825; and your petitioner would beg leave to assign the following reasons: Firstly, because Farrow, after examining your petitioner's account, and acknowledging its correctness, did stipulate in writing that the same should be paid so far as the appropriations of government should enable him to do so. Secondly, because the act of the 3d of March, 1825, provided that your petitioner should be paid as Farrow had stipulated in writing it should be done. Thirdly, the bond of indemnity taken by the Secretary of War bound government to the fulfilment of its requirements, which were, that the sub-contractors should first be paid out of the moneys appropriated for their special benefit by the act of the 3d March, 1825. Fourthly, the refusal or neglect of the Secretary of War to institute suits for your petitioner against Farrow and his

securities, as the act of the 3d of March, 1825, directed he should do on application of any sub-contractor who might feel himself aggrieved, and by his promise to see your petitioner paid, renders the responsibility of the government to your petitioner conclusive, as your petitioner conceives and verily believes. Your petitioner would further respectfully represent another important fact which has come to your petitioner's knowledge, from investigations made and promulgated through Peter Hagner, esq., 29th Congress, first session, which is, that \$15,000 of the \$73,747 78 appropriated expressly for the payment of your petitioner's just claim against Farrow and Harris was retained in the treasury and passed to the credit of Nathaniel Cox, after your petitioner's demand on the Secretary of War, through his agent, Mr. Adams, without sanction of law, as your petitioner is informed, and to the prejudice of your petitioner to the amount of that sum, with interest from the 3d of March, 1825, up to the time that it may be received by your petitioner. The Committee on Claims of the honorable the Senate, in their report, submitted by Mr. Ruggles, 25th Congress, 2d session, say: "All the money received under the act of the 3d of March, 1825, ought to be refunded in order that it might be applied by a more faithful agent, (alluding to Farrow,) in the payment of the debts of a meritorious and suffering class of creditors, for whose benefit that act was exclusively passed. From facts already stated, your petitioner cannot doubt the favorable consideration of your honorable bodies to the justness of his claim; and, as in duty bound, will ever pray.

ISRAEL KETCHAM.

STATE OF NEW YORK, *City and County of New York, ss:*

On this tenth day of December, in the year 1850, personally appeared before me, the undersigned, a commissioner of deeds in and for the city and county of New York, duly appointed, Israel Ketcham, to me known, who, being by me duly sworn, deposes and says that he has read the foregoing petition by him subscribed, and knows the contents thereof, and that the same is in all respects true, to the best of his knowledge, information, recollection, and belief.

ISRAEL KETCHAM.

Subscribed and sworn to before me this 10th day of December, 1850.

JAMES T. BOYD,

Commissioner of Deeds.

A.

Messrs. Farrow & Harris to Israel Ketcham,

	Dr.
25 bbls. corn meal, at \$5.....	\$125 00
7 bbls. prime pork, at \$17 50.....	122 50
7 bbls. beef, at \$14.....	98 00
3 bbls. beef, mess, at \$16.....	48 00
5 bbls. pilot bread, at \$8.....	40 00
15 bbls. navy bread, at \$5.....	75 00

6 dozen chopping axes, at \$27.....	\$162 00
2 dozen shovels, at \$12.....	24 00
1 dozen spades, at \$12.....	12 00
3 dozen knives and forks, at \$2.....	6 00
3 dozen iron spoons, at \$1.....	3 00
7 dozen tin cups, at \$1 50.....	10 50
5 dozen tin plates, at \$2 50.....	15 00
3 dozen mattresses and pillows, at \$36.....	108 00
1 dozen hoes, at \$12.....	12 00
2 hedge hogs, with apparatus, at \$20.....	40 00
1 fish seine, at \$60.....	60 00
6638 feet white pine boards, at \$25.....	165 96
24 Roram hats, at \$3.....	72 00
1 box for the same, at \$1.....	1 00
194 pair men's shoes, at \$1 50.....	291 00
2 boxes for the same, at \$1.....	2 00
2 sets harness, at \$15.....	30 00
3½ dozen wheelbarrows and gudgeons, at \$3 50.....	147 00
1 cart, at \$75.....	75 00
4 pair cart-wheels, at \$40.....	160 00
1 anchor, 600 cwt., at 10 cents per pound.....	67 00
2 pump boxes complete, at \$20.....	40 00
2 hhds. blocks, at \$100.....	200 00
156 lbs. iron, at 8 cents.....	12 48
19 bales hay, average 4 cwt. 2 qr., at \$1 50.....	128 25
500 lbs. oakum, at 15 cents.....	75 00
57 cwt. 1 qr. 16 lbs. cordage, at 12 cents.....	753 76
$\frac{1}{8}$ inch cable, 12 cwt., at 8 cents.....	107 52
$\frac{1}{4}$ inch hawser, 2 cwt., at 9 cents.....	20 16
15 fathoms 13-inch cable, 7 cwt. 2 qr., at 9 cents.....	67 20
2 kegs twist tobacco, 288 lbs., 40 cents.....	115 20
1 keg hand tobacco, 135 lbs., at 30 cents.....	39 90
1 bbl. roll, 168 lbs., at 13 cents.....	58 80
1 bbl., at 37 cents.....	37
1624 feet timber framed for house, at 18 cents.....	292 00
Ship Orris, at \$1,600.....	1,600 00
For repairs agreed to be paid on her..	348 75
For 160 passages from New York to Mobile, at \$30.....	4,800 00
Wages paid for 100 men two months, average \$30 each..	6,000 00
Board for the same, \$12 each, 2 months.....	2,400 00
Compensation for my own services.....	3,000 00
Discount on \$5,000 received.....	75 00
Expenses for going to Virginia after the same.....	80 00
1 dozen fancy chairs delivered at Red Bluffs, at \$3 50.....	42 00
Cash paid Seth Belknap..	300 00

22,528 55

By cash received.....	\$5,000 00
Balance due I. Ketchum.....	17,528 55

Mr. Farrow's acknowledgement..... 22,528 55

Mr. Israel Ketcham has this day presented the within account, and can produce vouchers for the same if it should be required. I do hereby promise to Mr. Israel Ketcham, in the event of the government allowing the claim of Messrs. Farrow & Harris, contractors for the erection of fortifications on Dauphin island, his claim, so far as it is right and just, and I do not know, at the present moment, anything to the contrary; but his claim is justly due to him, which shall be paid to him, or his representatives, in the event of the government leaving it in the power of me to do so.

Given under my hand this 10th day of March, 1824.

N. FARROW.

B.

I certify and declare that I was in Mobile county, State of Alabama, during the year 1819, and know that Israel Ketcham arrived in Mobile bay in the ship Orris, having on board one hundred and sixty or seventy laboring men and mechanics, to be employed in erecting a fortification at Dauphin island, and that the said laborers and mechanics were brought over to Mobile at the instance and request of Nimrod Farrow, esq., of Virginia, one of the contractors to build the said fortification. I also know that a large supply of provisions and implements of different kinds for carrying on the works were brought out in the Orris by the said Ketcham, and that said provisions, &c., were applied for by the agents of Farrow & Harris at the Red Bluffs, and considerable quantities, I believe, were delivered to them; thirty dollars is the lowest price that I know of men being carried from New York to Mobile for during the fall of 1819; I was well acquainted with the books and accounts of Israel Ketcham, and know that most of the men employed by him were paid off in full. I was present when, in the spring of 1819, Israel Ketcham contracted with Richard Harris to make a large quantity of brick for the fortification at Dauphin island, and know that Harris agreed to let Ketcham have possession of the Red Bluff for making the brick, in case Harris should succeed in getting a lease of it; and I also know that Harris refused to let Ketcham have the possession at the Red Bluffs, as he had agreed to do, on account of which refusal said Ketcham was subject to and suffered great inconvenience, disappointment, and loss.

THOMAS KETCHAM.

Sworn to before P. H. Wendell, notary public, in Albany, State of New York.

C.

CITY OF NEW YORK, ss:

William Thomas, of the city of New York, being duly sworn, deposeth and saith that he is well acquainted with Israel Ketcham, of said city. Deponent has always understood and believes that said

Ketcham was employed as a sub-contractor, under Farrow & Harris, in the construction of fortifications at Mobile and Dauphin island; that in the years 1823 and 1824 deponent was at Washington city, and was acquainted there with said Farrow; that deponent conversed with said Farrow about Mr. Ketcham's claim against him, and deponent says that said Farrow several times said that he was anxious that government should make an appropriation for his benefit, that he might be able to pay Mr. Ketcham about seventeen thousand dollars, which he owed said Ketcham for work and materials done and furnished by said Ketcham for the said fortifications at Mobile and Dauphin island. Said Farrow said that said Ketcham had sent a ship with laborers and materials. The conversation above alluded to occurred, in the absence of said Ketcham, at Farrow's rooms, in the city of Washington. Deponent had not and has not any interest in Mr. Ketcham's claim whatever, except as a mere acquaintance.

WILLIAM THOMAS.

Sworn to before H. Meigs, December 9, 1833.

D.

CITY OF NEW YORK, ss:

John Hogan, of said city, being duly sworn, deposeth and saith that in the year 1819 he was engaged by Israel Ketcham, of said city, to go with a company of workmen of various descriptions—pit-sawyers, ship-carpenters, house-carpenters, laborers, bakers, &c.—amounting to about one hundred and seventy-one persons, in the ship *Orris*, Captain Green, to Mobile bay, for the purpose of building a fort for the United States; that the whole party was provided with food and lodging, and paid by said Israel Ketcham; that after being there about two months the work was discontinued, as he believes, by order of government; that deponent was paid about \$77 by Ketcham for his work, and was found by him in passage, food, and lodging; deponent believes that the whole party was in some way fully paid and found in passage, food, and lodging by said Ketcham; the party remained there more or less of two months; deponent understood at the time that said Ketcham bought the said ship for the purpose of transporting said party to Mobile, with carts, wheelbarrows, axes, and other implements for the work; hay for horses, provisions for men, flour, bread, beef, and pork, and whiskey in large quantities, plenty for all hands; and deponent says that he believes that said Ketcham paid all the said party their respective wages and claims in full, and that their wages were at the least, on an average, thirty dollars each per month.

JOHN HOGAN.

Sworn to before H. Meigs, September 20, 1833.

E.

STATE OF NEW YORK, *Orange County, ss:*

Personally appeared before me, the subscriber, a justice of the peace in and for the county aforesaid, Seth Belknap, of the village of Newburg and county aforesaid, to me personally known to be a creditable witness, who, having been duly sworn according to law, doth depose and say that he is well acquainted with Israel Ketcham, of the city of New York and State aforesaid, and has been acquainted with him ever since the year one thousand eight hundred and nineteen, and believes him to be a man of good character, and upright in his dealings; deponent was also acquainted with Colonels Richard Harris and Nimrod Farrow, now, as deponent understands, both deceased, who entered into a contract with the government of the United States for building a fortification at Dauphin island, in the State of Alabama; deponent was a sub-contractor under the said Farrow & Harris, as was also the said Ketcham; that during the spring and summer of 1819 said Ketcham was under heavy expenses, made with Richard Harris, for making brick, and afterwards, in the fall of 1819, under contract with Nimrod Farrow, said Ketcham was at very great expense in taking out from the city of New York to Alabama a large number of mechanics, laborers, tools, implements, &c., for building the fort on Dauphin island; and that said Ketcham was actively employed in aiding, with all his men, the erection of the fort on Dauphin island, until the spring of 1820, when it was understood that government declined making any further appropriations towards erecting a fort on Dauphin island; and further this deponent saith not.

SETH BELKNAP.

Sworn to before Ward M. Gazley, justice of the peace, December 2, 1833.

F.

TERRITORY OF MICHIGAN, *Lenawe County, to wit:*

Be it remembered that, on this twenty-fourth day of October, A. D. one thousand eight hundred and thirty-three, personally came before me, Ross Wilkins, one of the judges of the supreme court of said Territory, Jacob Ketcham, of the said county of Lenawe, to me well known, who, having been duly sworn, deposeth and saith that in the fall of 1819 this deponent was living at Ithaca, Tompkins county, New York, and entered into a contract with his brother, Israel Ketcham, of the city of New York, to go to Dauphin island, at the outlet of Mobile bay, for the purpose of making brick for the fortifications then erecting at that place for the government of the United States, under a contract with one Nimrod Farrow, to whom the said Israel Ketcham was a sub-contractor; that the deponent left home about the first of October, in the year aforesaid, and arrived in the city

of New York about the tenth of the same month, where he found his said brother engaged in repairing and fitting the ship called the Orris, which he had purchased for the purpose of transporting the hands, implements, provisions, &c., to the said island for the prosecution of said work; that this deponent was present and assisted in loading said vessel with a large quantity of provisions, consisting of beef, pork, flour, corn meal, ship and navy bread, potatoes, beans and other vegetables, also a quantity of tools and implements, such as spades, shovels and axes, carts, cart-wheels, wheelbarrows, wheelbarrow wheels, and a quantity of shoes, hats, tobacco, hay in bales, also new rigging for a number of small vessels which were calculated to have been built at Fowl river for the purpose of carrying materials to the said island for completing said works, and that a number of persons was also hired and shipped on board of said vessel as mechanics and laborers for the said works to the number, as this deponent thinks, of one hundred and fifty, who were to receive as wages from twenty to fifty dollars per month, and that the said vessel sailed from the port of New York, this deponent thinks, about the first of November in the year aforesaid, and arrived at said island after a passage of twenty-three days, and that soon after the landing of the mechanics and laborers aforesaid many of them deserted the service of the said Israel Ketcham without making him any compensation whatever for their passage or board, much to the damage of the said Israel Ketcham, as this deponent verily believes; that this deponent assisted in keeping the books of his said brother, and was present at the payment of said hands, and was personally knowing to the fact of all those who remained and labored on the said works receiving full pay and satisfaction of the said Israel Ketcham, and that at about the expiration of two months from the time of the arrival of said ship and cargo at the said island the said Nimrod Farrow came to the said island, which was a considerable time after he had engaged with my said brother to be there, as this deponent heard him declare, and this deponent heard the said Farrow express his entire satisfaction with the general management and prosecution of the said works by the said Israel Ketcham; and the said Farrow further observed to the said Israel Ketcham that he (Ketcham) should lose nothing by his said detention, or by the contracts the said Ketcham had made for the prosecution of said works, and also that all engagements of the said Farrow with the said Ketcham should be satisfactorily arranged and settled with the said Ketcham; and this deponent further saith that soon after the arrival of the said Farrow he purchased the ship Orris of the said Israel Ketcham, together with all the remainder of the said stock of provisions, tools, implements, rigging, &c., but at what price or upon what terms this deponent knows not. And further this deponent saith not.

JACOB KETCHAM.

Sworn to and subscribed, at Tecumseh, the 24th of October, A. D. 1833, before

ROSS WILKINS,
Judge Supreme Court.

G.

We have long known Israel Ketcham, of the city of New York, formerly of Dutchess county, and we cheerfully certify that we believe him to be a man of good character, and that we would give full credit to his declarations on oath relative to his own affairs.

Herman P. Quackenboss
Alpheus Sherman
Levi Beardsley
John McKeon
Abraham Cargill
M. Myers
Thos. Herttell
J. Westervelt
Peter S. Titus
Richard Cromwell
N. Nye Hall
Jeromus Johnson
Charles L. Livingston
E. T. Throop
Samuel Swartwout
Hector Craig
D. Banks
W. K. Fuller

James Tallmadge
Thomas J. Oakley
B. Riker
John A. Graham
Peter H. Wendover
H. Meigs
Walter Bowne
Gideon Lee
B. Knower
Abm. Vanwest
Wm. Deitz
Jonathan S. Conklin
M. Vanschaick
John Yates Cebra
Daniel Dusenbury
Jacob Brush
Wm. Van Wyck
Cons. W. Lawrence.

NEW YORK, *September 4, 1833.*

STATE OF NEW YORK, *City of New York, ss:*

I, Henry Meigs, of said city, counsellor at law, formerly a member of the sixteenth Congress of the United States, at present recording secretary of the American Institute, do hereby certify that I have carefully examined the annexed documents relative to the claim of Israel Ketcham against the United States; that I have known said Israel Ketcham for about thirty years, and have very often heard of this claim, which I have no doubt whatever of its perfect truth and justice; that vouchers and papers hereto annexed, marked C, being a copy of William Thomas' affidavit; D, being a copy of John Hogan's affidavit, both sworn before me in 1833, and voucher G, being a declaration of full credit in the integrity of said Israel Ketcham, made in writing in September, 1833, signed by citizens known to our country generally as men of unquestionable truth, is a copy, as I have not a particle of doubt, of the original declaration of which *I the least* was a signer, nor would any one of those signers hesitate, if living, to renew at this distant time their said declaration of confidence in the honor and honesty of the said Israel Ketcham.

H. MEIGS,

*Of the 16th Congress of the United States,
Now Recording Secretary of the American Institute.*

Admitted in evidence.

J. D. McPHERSON,
Deputy Solicitor.

SENATE CHAMBER, *April 12, 1854.*

SIR : The Senate Committee on Claims have under consideration the petition of Israel Ketcham, praying relief for the losses sustained by him, as sub-contractor, in the erection of the fortifications at Dauphin island, for which Farrow & Harris were contractors. In his petition, Mr. Ketcham complains of the misapplication of the sum of \$73,487 78 obtained from the United States by said Farrow & Harris, under the provisions of an act passed for their relief on the 8th of March, 1825, (U. S. Statutes at Large, vol. 6, p. 332.) The petitioner alleges that, on the failure of Farrow to comply with the provisions of said act, he applied to the Secretary of War to prosecute the bond as required by the act, which the Secretary failed to do, thus leaving him (the petitioner) without remedy, Farrow & Harris and their sureties having become insolvent and irresponsible.

The committee desire to be informed whether the files or records of the department contain any evidence of any such application by Mr. Ketcham, or any one else; and if so, whether the department took any action in the matter; they also desire to be furnished with any facts in the possession of the department calculated to throw light upon the merits of the case.

I have the honor to be your obedient servant,

S. P. CHASE.

Hon. JEFF. DAVIS, *Secretary of War.*

Copy admitted to be correct.

JOHN D. McPHERSON,
Deputy Solicitor.

WAR DEPARTMENT,
Washington, May 4, 1854.

SIR : In reply to your inquiry of the 12th ultimo, whether Israel Ketcham, or any one else, ever applied to the Secretary of War to prosecute the bond given by Farrow & Harris, contractors for the erection of fortifications on Dauphin island, I have the honor to transmit you a report of the colonel of engineers, stating that there is no evidence on record of any such application having been made, and giving all the information relating to the subject in the possession of the department.

Very respectfully, your obedient servant,

JEFF'N DAVIS,
Secretary of War.

Hon. S. P. CHASE,
Of Committee on Claims, Senate.

ENGINEER DEPARTMENT,
Washington, April 28, 1854.

SIR: In reply to the letter of the Hon. S. P. Chase, of the Senate Committee on Claims, of the 12th instant, referring to the act of the 3d of March, 1825, for the relief of Nimrod Farrow and Richard Harris, and inquiring whether an application was ever made by Israel Ketcham, or any one else, to the Secretary of War to prosecute the bond given by Farrow & Harris, principal contractors in the erection of the fortifications at Dauphin island, and asking to be furnished with any facts in possession of the department calculated to throw light upon the merits of the case, I have the honor to report as follows:

There is no registry of any letter received from Israel Ketcham, nor has this department been able to fall upon any trace leading to letters from other persons making application for the prosecution of the bond in question. It appears, however, from extracts from the records of this office given below, that "the bond has been taken, the money has been paid, and upon an application and satisfactory proof of the failure of Farrow to fulfil the condition of the bond it has been prosecuted; and, moreover, that on the 6th of October, 1826, the War Department determined to take no further steps in the matter until Congress shall decide upon the course to be pursued."

For information on this complicated subject, I beg leave respectfully to refer to the following congressional documents:

Reports of Committees, 2d session, 18th Congress, 1824-'25, vol. 1, Rep. 69; State Papers, 2d session, 20th Congress, 1828-'29, vol. 2, Doc. 21; Executive Documents, 2d session, 23d Congress, 1834-'35, vol. 3, Doc. 78; Reports of Committees, 2d session, 24th Congress, 1836-'37, vol. 2, Rep. 245; Senate Documents, 2d session, 25th Congress, 1837-'38, vol. 4, Doc. 367; Reports of Committees, 3d session, 25th Congress, 1838-'39, vol. 1, Rep. 39; Reports of Committees, 3d session, 27th Congress, 1841-'42, vol. 1, Rep. 50.

I have the honor to be, very respectfully, your most obedient,

JOS. G. TOTTEN.

Brevet Brigadier General, and Colonel of Engineers.

Extract from a letter from General A. Macomb to the Hon. James Barbour, Secretary of War, dated August 28, 1826, reporting upon two communications addressed to the Secretary by Colonel G. C. Russell, as the attorney for Nimrod Farrow, and referring to the act of the 3d of March, 1825, for the relief of Nimrod Farrow and Richard Harris.

"All the requisitions of this section (third section, act 3d March, 1825,) have been fully complied with; the bond has been taken, the money has been paid, and upon an application and satisfactory proof of the failure of Farrow to fulfil the condition of the bond it has been prosecuted."

Copy of a letter from the War Department to Gilbert C. Russell, esq., dated War Department, October 6, 1826.

"SIR: I have received your communication of the present date, desiring an answer to your letters addressed to me last summer on the subject of carrying into effect the act of Congress passed the 3d of March, 1825, entitled an act for the relief of Farrow & Harris.

"In answer to your communication, I have to say to you that, as the subject has been referred to Congress, and as it is now before that body, and as there are so many difficulties connected with it from the variety of conflicting interests which have been presented since the passage of the act, the department is determined to take no further steps in the matter until Congress shall decide upon the course to be pursued."

WAR DEPARTMENT,
Washington, January 29, 1855.

SIR: I have the honor to acknowledge the receipt of your letter of the 23d instant, enclosing the petition, papers, and Senate bill 464, for the relief of Israel Ketcham, and asking for all facts in the possession of this department that will throw additional light upon the claim.

In reply, I transmit you a report of the chief engineer, from which you will perceive that the only information in the department not contained in the papers sent by you is in the report of that officer dated April 28, 1854, which was sent to the Committee on Claims of the Senate, in a letter from this department dated May 4, 1854, copies of which are now enclosed.

All the papers are herewith returned.

Very respectfully, your obedient servant,

JEFFERSON DAVIS,
Secretary of War.

Hon. D. MACE,
Of Committee on Claims, House of Representatives.

ENGINEER DEPARTMENT,
Washington, January 26, 1855.

SIR: I respectfully return herewith the papers in the case of Israel Ketcham, a petitioner to Congress for indemnity for losses sustained by him under a contract with Nimrod Farrow, contractor for the erection of fortifications on Dauphin island, Mobile bay, which, with a letter from the Hon. Daniel Mace, of the Committee on Claims, dated the 23d instant, were referred by you to this office for information.

The only information in this office, in reference to this contract, which is not already embodied in the papers referred, was reported to you in a communication from this office on the 28th of April, 1854.

This report, it appears, was transmitted from the War Department, on the 4th of May, 1854, to the Hon. S. P. Chase, of the Committee on Claims of the Senate, and as it is not found among the papers referred, I have added to them a copy of it, and of your letter with which it was transmitted to Mr. Chase.

I am, very respectfully, your obedient servant,

JOS. G. TOTTEN,
Brevet Brig. Gen., Top. Eng.

Hon. JEFFERSON DAVIS,
Secretary of War.

Circuit Court of the District of Columbia, for the county of Washington.

JAMES BARBOUR, Secretary of War, use of Roland Clapp, *vs.* GILBERT C. RUSSELL.

December Term, 1828—Action of debt in bond.

I, John A. Smith, clerk of the circuit court of the District of Columbia, for the county of Washington, hereby certify that on the 20th July, 1826, the above suit was instituted, and discontinued at December term, 1828, as appeareth of record.

In testimony whereof, I have hereunto subscribed my name and [L. S.] affixed the seal of said court this 8th January, 1855.

JOHN A. SMITH, *Clerk.*

Circuit Court of the District of Columbia, for the county of Washington.

THE SECRETARY OF WAR, use of Roland Clapp, *vs.* GILBERT C. RUSSELL.

No. 120 trials—December Term, 1828.

I, John A. Smith, clerk of the circuit court of the District of Columbia, for the county of Washington, do hereby certify that in the above entitled cause is filed a copy of a bond made the 19th day of April, 1825, whereby Nimrod Farrow, George Fisher, Wm. Kelly, L. H. Jones, Gilbert C. Russell, and Jacob Fisher, became bound unto James Barbour, Secretary of War, in the sum of \$120,000, conditioned for the fulfilment by said Farrow of the provisions of the third section of the act of Congress for the relief of Farrow & Harris, approved March 3, 1825, and upon said copy is the following indorsement, to wit:

“Let the suit on the bond be prosecuted according to the directions of the act.

“JAMES BARBOUR.

“WAR DEPARTMENT, July 20, 1826.”

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court this 5th day of December, 1856.

[L. s.]

JNO. A. SMITH, *Clerk.*

Deposition of Israel Ketcham.

[Extracted from Rep. Com. 69, H. R., 2d sess., 18th Cong., p. 61.]

The deposition of Israel Ketcham, of the city of New York, taken at the city of Washington this 12th day of March, 1824, in presence of Thomas Swan, esq., commissioner, &c., to be read in evidence on the claim of Harris & Farrow.

This deponent, being duly sworn, says that he became acquainted with Nimrod Farrow, esq., in the city of New York, on the 1st of September, 1819, where he entered into an agreement with the said Farrow, who was concerned with Richard Harris under a contract with the government of the United States to build extensive fortifications on Dauphin island; that the said Farrow advanced to the deponent the sum of \$5,000, to be used in the purchase of materials, &c., for the use of the works on said island, and that in pursuance thereof he did so lay out the same, and purchased a suitable vessel, and provided it with various materials, implements, &c., and shipped one hundred and sixty laborers and mechanics, and arrived at the island about the 25th of November, 1819; that he found about two hundred laborers judiciously employed in the objects of the contract, and that he remained on the island, or in its vicinity, until the month of May, 1820; and that the contractors had progressed in considerable and costly preparations, when it was agreed between the contractors and General Turner Starke, of Alabama, to substitute black for white labor, the contractors to furnish one hundred efficient negro laborers, and the said Starke as many more; that the said change of black for white labor was in successful operation when deponent left the island, and, in the opinion of this deponent, was a change which would have insured a successful termination of their contract, and would have resulted in a profit to the contractors of at least \$300,000, arising as well from the substitution of black labor as the great and unexpected fall of the price of every kind of labor and material necessary to complete the contract.

Question. How long have you been acquainted with Richard W. Naylor, who is in the employment of Messrs. Farrow & Harris as storekeeper at the public works at Dauphin island?

Answer. I became acquainted with R. W. Naylor from the winter of 1819, and have known him to the present time, and believe him to be a man of industrious habits and good morals, and should place confidence in any statement of his on oath.

ISRAEL KETCHAM.

I have no questions to ask the witness.

THOMAS SWAN.

DISTRICT OF COLUMBIA, *Washington County*:

On this 12th of March, 1824, appeared Israel Ketcham, who made oath in due form of law that the facts set forth in the foregoing affidavit subscribed by him are true, to best of his knowledge and belief.

Given under my hand and seal the day and year above written.

R. C. WEIGHTMAN, [L. s.]

Justice of the Peace.

Extracts from report No. 181, House of Representatives, 20th Congress, 1st session, March 7, 1828.

The Committee on Claims, to whom was referred the petition of Richard Harris and Nimrod Farrow, of the State of Virginia, report:

* * * * *

The petitioners have exhibited an account current claiming for actual expenditures, damages, and losses, a balance of \$78,618 45½. But in this account, under the head of expenditures, some items are charged for which the committee think the United States are not liable. If these be excluded, the aggregate of expenditures, as evidenced by the account, will be about \$313,662, which is more than \$1,800 greater than the amount to which Mr. Naylor testified. This coincidence, though not exact, is yet remarkable, considering the extent and variety of these transactions, and goes to strengthen the confidence which the committee think ought to be reposed in the testimony of Mr. Naylor. This sum of \$311,839, the committee believe, includes the price paid at different times for the slaves purchased for carrying on the work on Dauphin island. No danger is perceived in assuming it as the correct criterion, for the only apprehension which can rest upon the mind of any one is, that the allowance may not be so great as that which the petitioners may be entitled to receive. According to the statement of Colonel Clarke, the amount should be greater by upwards of \$43,000, and it is \$39,618 45½ less than the sum claimed as the balance due the petitioners in the account current. But the coincidence between the account and the statement of Mr. Naylor induces the committee to rely upon his testimony, and to fix the whole amount of expenditures at \$311,839, instead of \$355,000, the statement of Colonel Clarke.

* * * *

In the next place, the petitioners charge for the loss of seventeen slaves, detained by the United States and not returned to them. The committee cannot doubt that the slaves, eighty-one in number, were in possession of the United States, and ought to have been returned. The deed of trust to Captain Gadsden, dated April 10, 1820, before referred to by the committee, and the report of the chief engineer to the Secretary of War, dated April 22, 1822, furnish conclusive evidence as to this point.—(See Rep. Com., 2d sess. 18th Con., No. 69.)

* * * *

The committee are therefore of the opinion that the United States should pay for the seventeen slaves lost or detained in their possession, and not returned to the owners.

The claim of the petitioners, if decided according to the principles indicated by the committee, will stand as follows:

The United States to Harris & Farrow,

DR.

To amount of actual expenditures under a contract for erecting a fortification on Dauphin island.....	\$311,839 00
To the value of 17 slaves lost, which were kept from the possession of the contractors under a deed of trust.....	10,200 00
	<hr/>
	322,039 00
	<hr/> <hr/>

CR.

By cash paid at sundry times for work put up and materials furnished.....	\$162,251 37
By 81 slaves, cost \$600.....	48,000 00
By amount of award of commissioner.....	73,747 78
	<hr/>
	283,999 15
	<hr/>
Leaving this sum due the contractors.....	39,039 85
	<hr/> <hr/>

Decision of the Secretary of War, printed in Doc. 27, House of Representatives, 20th Cong., 2d sess., p. 2.—[370.]

The accounting officers of the treasury will allow under the 4th section of the act of March 3, 1825, for the relief of Farrow & Harris, under conformity with the within report of the Committee on Claims, to John Scott, the attorney of Nimrod Farrow, and trustee under an assignment of Nimrod Farrow, to secure certain sums of money to be paid to John Glassell, Margaret Glassell, and to Joseph Lewis, the amount of two judgments against John Tutt and John Ashley, the sum of two thousand two hundred dollars, being the value of seventeen slaves which were taken possession of by the United States, and which were not returned to the above-named Farrow & Harris.

SAM'L. L. SOUTHARD,
Acting Secretary of War.

DEPARTMENT OF WAR, June 2, 1828.

Extract from memorial of Nimrod Farrow, dated December 17, 1828, printed in Doc. 36, 2d sess., 20th Cong., p. 11.—[370.]

Statement showing the balance due under the 4th section of the act of Congress, passed March 3, 1825, for the relief of Harris & Farrow.

Loss on 50 slaves by reduction on value, whilst they were detained by government (see Lieutenant Ogden's deposition,) \$200 each.....	\$10,000
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Price of 28 slaves who died or ran away during that period, at \$700 each.....	\$19,600
Loss of vessels, boats, horses, &c., supposed worth \$10,000, one moiety.....	5,000
	<hr/> 34,600
By assignment to the United States for balance due Coxé.....	15,000
	<hr/> 19,600
Interest on this sum from December 31, 1825, to June 1, 1828.....	2,842
	<hr/> 22,442
Then paid.....	10,200
	<hr/> 12,242
Due with interest from June 15, 1828.....	<hr/> <hr/> 12,242

IN THE COURT OF CLAIMS.

ISRAEL KETCHAM *vs.* THE UNITED STATES.

PETITIONER'S BRIEF.

Statement.

In the year 1818 Messrs. Farrow & Harris entered into a contract with the United States for the construction of a fortification at Dauphin island, at Mobile, and in the year 1819 the said Farrow & Harris also entered into a contract with the petitioner to furnish labor and materials for that purpose; and in compliance with said contract he took out from New York a number of mechanics and laborers, with provisions, implements, and materials, to Dauphin island, and expended in the fulfilment of said contract the sum of \$22,528 55, of which sum there has been paid to him only the sum of \$5,000, leaving a balance due and unpaid of \$17,528 55, as will more fully appear by the account.—(Rec., pp. 20, 21.)

To said account the said Farrow, on the 10th day of March, 1824, appended the following acknowledgment, viz :

“Mr. Israel Ketcham has this day presented the within account, and can produce vouchers for the same if it should be required. I do hereby promise to Mr. Israel Ketcham, in the event of the government allowing the claim of Messrs. Farrow & Harris, contractors for the erection of fortifications on Dauphin island, his claim, so far as it is right and just, and I do not know, at the present moment, anything to the contrary; but his claim is justly due to him, which shall be paid to him, or his representatives, in the event of the government leaving it in the power of me to do so.

“Given under my hand this 10th day of March, 1824.

“N. FARROW.”

The erection of said fortification was subsequently abandoned by the government, and several acts were subsequently passed by Congress for the relief of the contractors, the said Farrow & Harris, with a view of indemnifying them for the losses consequent upon the abandonment of the work by the United States; and on the third day of March, 1825, an act of Congress was passed, by which it was enacted as follows:

"Be it enacted, &c., That the Secretary of War cause to be withdrawn and dismissed a suit which is now pending by the United States against Nimrod Farrow and his securities, for moneys advanced him by the United States as one of the contractors for erecting a fort on Dauphin island, and that the bond on which the suit was instituted be cancelled.

"SEC. 2. And be it further enacted, That the Secretary of War cause to be delivered up and released, by proper conveyances, to Nimrod Farrow, contractor for erecting a fort on Dauphin island, all liens or securities which the United States may hold on property, real or personal, of the said contractor.

"SEC. 3. And be it further enacted, That the proper accounting officers of the Treasury Department pay unto Nimrod Farrow, contractor for erecting a fort on Dauphin island, or to his legal representatives, the sum of seventy-three thousand seven hundred and forty-seven dollars and seventy-eight cents.

"Provided, That the said Nimrod Farrow, before he shall receive any of the personal property to be delivered as aforesaid, and before he shall be entitled to receive the money above mentioned, shall enter into a bond to the Secretary of War, with security to the acceptance of said Secretary, to the penal sum of \$120,000, conditioned that the said Nimrod Farrow shall appropriate the net proceeds of the personal property and the money to be received towards the payment of the debts contracted by Farrow & Harris, or either of them, or any other person or persons contracting under said Farrow & Harris for supplies furnished and services rendered in and about the erection of said fortification; and that, if there shall be any surplus after paying the said debts contracted as aforesaid, said Farrow shall pay to said Harris, or his legal representatives or assigns, his just proportion of said surplus, which bond shall be deposited with the Secretary of War, and it shall be the duty of said Secretary, upon the application of any of the parties interested therein, and satisfactory proof of the failure of said Nimrod Farrow to fulfil the conditions thereof, to cause the said bond to be prosecuted for the benefit of the party or parties making such application, and of such other person or persons as may have an interest in said bond.

"SEC. 4. And be it further enacted, That an inventory be taken of such personal property as shall be returned to the said Farrow under the provisions of this act, and an estimate of its value be made under such regulations as the Secretary of War may prescribe, and that there be paid to said Farrow such difference as exists between the value of the personal property at the time the same was taken possession of by the government and its return, together with the value of the personal property destroyed or lost while the same was in the possession

of the government, except the same was lost or destroyed by the act of God.

"SEC. 5. *And be it further enacted*, That the several sums to be paid by the provisions of this act be paid out of any money in the Treasury not otherwise appropriated."

A bond was taken by the Secretary of War, in pursuance of the provisions of said act, and Gilbert C. Russell was one of the sureties in said bond, and signed the same upon the express condition that he was to receive the property, or money in lieu thereof, and pay the debts, which amounted to \$112,000; but the Secretary of War dismissed a suit which was then pending against Farrow & Harris on the part of the United States, and paid to the said Farrow & Harris the sum of \$73,000, but absolutely refused to return the property, out of the proceeds of which, and with the said \$73,000, the debts were to be paid; and upon a suit brought by a creditor of said Farrow & Harris, claiming the benefit of said act of Congress against said surety, he was discharged on the ground that said Secretary had failed to execute the provision of said act in relation to said property.

The petitioner, soon after the passage of said act, caused an application to be made on his behalf to the Secretary of War, to institute a suit on said bond against the principal and sureties in the same for his benefit, and at the same time filed with the Secretary the evidence of his claims as a sub-contractor of said Farrow & Harris, but the said Secretary neglected and refused to cause any suit to be instituted on said bond, or to adopt any measure for the application of said money and property towards the payment of the debt of your petitioner.

The petitioner, therefore, claims that the provision of the act of Congress for the payment of the just and acknowledged debt of your petitioner, as a sub-contractor, was defeated by the wrongful act of the Secretary of War, both by his refusal to cause a suit to be instituted on said bond, and by his refusal to transfer said personal property according to the provisions of said act; and that his refusal so to transfer said personal property, in obedience to said act of Congress, deprived the said petitioner of all remedy against the said sureties; and the petitioner has been wholly unable to collect his debt, or any part of the same, from Farrow & Harris, they being wholly insolvent, and no part of the same has since been paid.

The following is an extract from the deposition of Colonel Gilbert A. Russell:

"The act of Congress of 1825 for the relief of Harris & Farrow directed that \$73,000 should be paid to them, and all their property in Alabama, which had been mortgaged or conveyed in trust, estimated at \$120,000, should be returned to them or paid for, unless it had been destroyed or lost by the act of God, never was executed. The act required Harris & Farrow to give bond and security in the sum of \$120,000, that the proceeds of the property, with the \$73,000, should be applied to the payment of any debts contracted by them or their agents for work done or materials delivered, &c., &c. This was done, and I signed the bond on condition that I was to receive the property, or money in lieu thereof, and pay the debts, which amounted to \$112,000. The Secretary of War, in accordance with the requirements of the act, dismissed a suit then pending against Harris &

Farrow, and paid the \$73,000, but absolutely refused to give an order for a return of the property, out of the proceeds of which their debts were to be paid. I was sued by Roland Clapp, who claimed \$6,000, and was held to bail; from the order to hold me to bail, I was discharged, upon the ground that the Secretary of War had failed to execute the provisions of the act; whereupon Clapp dismissed his suit. Had the Secretary complied with this, the most important provision of the act, the just debts of Harris & Farrow would have been paid forthwith. But by the ignorance, or something worse, of the Secretary of War, he positively refused to execute this part of the law, and the debts due for 'work done and materials delivered' were not paid."

I. The testimony in the case shows clearly that the balance which was due the petitioner from Farrow & Harris was \$17,528 55.

II. The act of Congress of the 3d March, 1825, provided for the payment to Nimrod Farrow of \$73,747 78, but that "before he shall receive any of the personal property to be delivered as aforesaid, and before he shall be entitled to receive the money above mentioned, the said Farrow shall enter into a bond to the Secretary of War, with security to the acceptance of said Secretary, in the penal sum \$120,000, conditioned that the said Nimrod Farrow shall appropriate the net proceeds of the personal property, and the money to be received, towards the payment of the debts contracted by Farrow & Harris, or either of them," &c.

It thus appears that the avails of the "personal property," as well as the money, were to be applied to the payment of the sub-contractors, of whom Ketcham was one; and in order to secure this application to the payment of their debts, before signing the bond obligating themselves that the property should be so applied, an express condition was made by Colonel Russell, one of the sureties in the bond, that he "was to receive the property, or money in lieu thereof," but the Secretary of War "absolutely refused to give an order for a return of the property, out of the proceeds of which their debts were to be paid."

If this arrangement had been carried into effect, not only would the sureties have had the means to pay the amount due to Ketcham, and others, but an equitable lien would have existed on the property itself in favor of the sub-contractors, which could have been enforced by the proper legal proceedings.

But the refusal to place the property, in pursuance of the condition, in the hands of the sureties by the Secretary, entirely discharged them from all liability on their bond.

Colonel Russell, one of the sureties thus discharged, expressly swears that "had the Secretary complied with this, the most important provision of the act, the just debts of Harris & Farrow would have been paid forthwith."

III. The act of Congress expressly provided: "And it should be the duty of said Secretary, upon the application of any of the parties interested therein, and satisfactory proof of the failure of said Nimrod Farrow to fulfil the conditions thereof, to cause the said bond to be prosecuted for the benefit of the party or parties making such application, and of such other person or persons as may have an interest in said bond."

It appears, from the certificate of the clerk of the United States cir-

cuit court for the District of Columbia, (Rec., p. 30,) that the Secretary of War ordered "the suit on the bond to be prosecuted according to the directions of the act." The order was by an endorsement on the copy of the bond filed in the clerk's office, and was dated July 20, 1826.

It further appears, by the certificate of the same clerk, that this suit was discontinued at the December term, 1828, by the act of the Secretary of War himself. The suit was solely under his direction, and was prosecuted not only for the benefit of Roland Clapp, but "of such other person or persons as may have an interest in said bond."

Whether this suit was abandoned by the Secretary for the reasons stated by Colonel Russell, or for other reasons, it is clear that it was abandoned, not on account of any act or omission on the part of Clapp or Ketcham, or any other sub-contractor, but on account of the wrongful acts or omissions of the Secretary of War himself.

IV. The pecuniary interests of the parties were expressly intrusted by law to one of the high officers of the government, and the government is clearly responsible for his acts. Congress recognised the obligation of the government for the payment of the debts due to the various parties in interest connected with the transaction, and to see that the property and money should be first applied to the payment of the parties who did the work; but the culpable negligence, at least, of an officer of the government has defeated the just and honest purpose of the act of Congress, and the petitioner has been deprived of the benefit of it.

This is similar to the case where money is by act of Congress directed to be paid to one person, and by mistake or design the money is paid to another. The government in such case always holds itself liable to pay the money again—to the person entitled to it.

From these clear principles of law and justice, sustained by the uniform practice of the government, it is apparent that the petitioner is entitled to relief.

JOHN A. ROCKWELL,
Of Counsel for Petitioner.

IN THE COURT OF CLAIMS.

ISRAEL KETCHAM *vs.* THE UNITED STATES.

SOLICITOR'S BRIEF ON FINAL HEARING.

Claim for moneys which were due the petitioner as a sub-contractor under Nimrod Farrow for the erection of fortifications on Dauphin island, in Mobile bay, and which it is insisted the government is bound to pay, because the Secretary of War did not properly execute an act of Congress.

FACTS AS UNDERSTOOD BY THE SOLICITOR.

1. That Nimrod Farrow was a contractor for the erection of a fortification on Dauphin island, in Mobile bay, about the year 1819.
2. That Richard Harris was, as assignee in part of the contract, or otherwise, interested with said Farrow in its execution.

3. That in 1823 it became a question whether the government or the contractor, or both, had failed in fulfilling this contract, and Congress passed an act (March 3, 1823, 6 U. S. L., 283, 284) for the appointment of suitable persons to examine into this subject, and report; directing suits then pending against Farrow & Harris, and their sureties in Virginia, to be suspended to the end of the next session of Congress.

4. That on the 3d of March, 1825, Congress passed a law for the relief of Farrow & Harris.—(6 U. S. L., 331.)

The first section directed the suit against Farrow, as one of the contractors, and his sureties to be dismissed, and the bond on which it was instituted to be cancelled.

The second, "that the Secretary of War cause to be delivered up and released, by proper conveyances, to Nimrod Farrow, contractor for erecting a fort on Dauphin island, all liens and securities which the United States may hold on property, real or personal, of the said contractor."

The third section provided that \$73,747 78 should be paid to Farrow, out of the treasury, with this proviso:

"*Provided*, That the said Nimrod Farrow, before he shall receive any of the personal property to be delivered as aforesaid, and before he shall be entitled to receive the money above mentioned, he shall enter into a bond to the Secretary of War, with security to the acceptance of the said Secretary, in the penal sum of one hundred and twenty thousand dollars, conditioned that the said Nimrod Farrow shall appropriate the net proceeds of the personal property, and the money so to be received, towards the payment of the debts contracted by Farrow & Harris, or either of them, or any other person or persons contracting under said Farrow & Harris, for supplies furnished and services rendered in and about the erection of said fortifications; and that if there be any surplus after paying the said debts contracted as aforesaid, the said Farrow shall pay to the said Harris, or his legal representatives or assigns, his just proportion of said surplus, which bond shall be deposited with the Secretary of War; and it shall be the duty of the said Secretary, upon the application of any of the parties interested therein, and satisfactory proof of the failure of said Nimrod Farrow to fulfil the condition thereof, to cause the said bond to be prosecuted for the benefit of the party or parties making such application, and of such other person or persons as may have an interest in said bond."

The fourth section provided, "That an inventory be taken of such personal property as shall be returned to the said Farrow under the provisions of this act, and an estimate of its value to be made under such regulations as the Secretary of War may prescribe, and that there be paid to said Farrow such difference as exists between the value of the personal property at the time the same was taken possession of by the government and its return, together with the value of the personal property destroyed or lost while the same was in the possession of the government, except the same was lost or destroyed by the act of God."

5. That on the 14th of July, 1832, Congress passed an act for the

relief of the legal representatives of Nimrod Farrow and Richard Harris, which constituted the Third Auditor, Second Comptroller, and Charles Gratiot, a board to examine the claims of Farrow & Harris growing out of their contract to build said fort, upon principles of justice and equity, and to report to Congress at the next session.—(6 U. S. L., 526.)

6. No evidence has been furnished showing that the government had any liens or securities on the real or personal property of Farrow, or that any release was executed discharging any claim of the government thereto, or what was done on that subject.

7. That before paying to Farrow the \$73,747 78, the Secretary of War took from him a bond and security in the penal sum of \$120,000, in conformity with the proviso of the third section of the act of the 3d of March, 1825.—(Rec., p. 6, claimant's petition.)

8. There is no sufficient and proper evidence that the claimant had a legal demand against Farrow and Harris, or either of them.

The statements by Farrow or Harris concerning the state of the accounts between them and Ketcham is no evidence against the United States. Copies of *ex parte* extra judicial oaths prove nothing whatever.

9. There is no evidence that Ketcham ever applied to the Secretary of War to have Farrow's bond prosecuted, but it is shown that he did not so apply.

General Totten states that "there is no registry of any letter received from Israel Ketcham, nor has this department been able to fall upon any trace leading to letters from other persons making application for the prosecution of the bond in question."—(Rec., p. 27.)

This repels the idea that Ketcham requested the Secretary to prosecute said bond for his benefit, although it fully appears that at the instance of some one the bond was actually prosecuted. From the certificate of John A. Smith, clerk of the circuit court for the District of Columbia, it is probable that it was done at the instance of Rowland Clapp, (Record, pp. 29, 30,) a suit for whose benefit was discontinued.

With a single limited fund, and numerous and large claims, and no special provisions of law regulating the matter, it is probable that the conditions of Farrow's bond could not be enforced, except by some special arrangement among the claimants producing harmony and correct action. Without authority to exercise equity powers to bring in all claimants upon the fund, where there is no statute law to control such a bond, it could not be enforced where there was more than one claimant.

10. There is no proof that Ketcham ever furnished to the Secretary of War "satisfactory proof of the failure of the said Nimrod Farrow to fulfil the conditions" of the bond.

11. There is no evidence concerning the valuation or loss of the personal property, as provided under the 4th section of the act of 1825.

LEGAL PROPOSITIONS.

I. *That the copies of papers now presented are not evidence, because there is no evidence that the originals are destroyed or inaccessible, and none that those presented are true copies of the originals.*

In the claimant's sworn statement, (at pp. 13 and 14 of the Record,) he says that the papers produced are simply copies, and that the originals, or a portion of them, are lost.

a. This statement is too vague and uncertain to enable the court to act upon it. It does not state positively that any paper has been lost or destroyed. No indictment for perjury could be formed upon it. The court cannot say what papers have been lost or destroyed.

b. Although, from necessity, the party's own oath may be taken to prove a loss or destruction of a written instrument, its existence must first be proved by legal evidence. His own oath is never received to prove the latter fact. It would be dangerous to do so, and would lead to endless abuse.

c. The party cannot prove, by his own oath, that the papers he produces are correct copies of lost or destroyed originals. This fact he must prove by other competent evidence, as other facts are proved. If he could be permitted to prove the existence, then the loss, and also the correctness of the copies produced, he would prove his whole case. The fact of his having lost his papers cannot lay the foundation for his proving by his own oath their existence, and that he produces true copies of them.

In this case, there is no pretence that the various depositions produced are originals. If every word in them were untrue, there is no possible means, under the claimant's statement, of convicting those who purport to have sworn to them of perjury. He does not even swear that he compared the copies with the originals. The whole evidence must be rejected as illegal, unless it shall be shown that some of it is really original, which does not appear from the record.

II. *Hearsay evidence proves nothing, even if received.*

This is an elementary principle of almost universal application, and needs neither authority or illustration to secure its practical adoption. Nearly the entire depositions introduced are devoted to stating what is mere hearsay, or matter of opinion, or guess work. If these *ex parte* affidavits were otherwise unobjectionable, they prove little or nothing because of these faults.

Russell swears (Record, pp. 10, 11) that the Secretary of War did not execute a part of the act of 1825. But he could not know this. In this statement he states hearsay, or guesses at the fact.

He states that the Secretary of War refused to give an order for certain property; but he could not know that he never did so, though there was nothing in the law requiring him to give such order, or perform any act except to execute a release.

He swears to the grounds of Clapp's dismissing his suit; but he could not know that fact, even if Clapp had said so to him.

He says if the Secretary of War had complied with his duties under the law, the debts due by Farrow & Harris would have been paid. He did not, and could not know that fact. He merely guessed at it.

He says this omission was occasioned by the ignorance of the Secretary of War, or something worse. This he did not, and could not know, except by hearsay. These statements of his are not only not evidence, but are of that character that shows he ought not to be believed, even if his evidence had been legally taken, because he swears positively to what he could not possibly know.

Case's evidence is in every material particular hearsay, or his conclusions from what he knew, and not a statement of facts. It proves nothing that has any bearing upon the questions involved.

Meigs's affidavit is entirely of that character. He states no material or pertinent fact.

The supposed acknowledgment by Farrow (Record p. 21) of copies of vouchers, B, C, D, E, F, and G, is not proved. The statements of those who make affidavits in them prove nothing in a legal way. They are mere hearsay matters. The defendant's own affidavits can establish no fact in his favor. The whole mass of guessing and hearsay evidence must be rejected, and this includes nearly the entire body of papers presented by the claimant as evidence.

III *The depositions offered in evidence are ex parte, and were taken without notice to the United States, and before officers not authorized to administer oaths in cases in this court.*

Ex parte evidence is never admissible in any court, nor can depositions be taken except before persons authorized by law to take the same. The depositions in this case show upon their face that they were taken *ex parte*, and before justices of the peace, who are not authorized to administer oaths in cases in this court. These objections, if they do not apply to all by reason of stipulations, extend to all that are material in establishing the claimant's case, and they must, therefore, be rejected.

IV. *The assumed admission by Farrow of indebtedness by him to Ketcham is no evidence against the United States.*

What he may have said in writing or orally, is, as between Ketcham and the United States, mere hearsay evidence. Although it might be good between Ketcham and Farrow, it establishes no fact between third persons. He might say that, when he did not owe anything. A witness might swear to what Farrow said or wrote, but it would only be testifying to what he heard another say, and would not prove the fact at all. If Farrow's signature were proved to the paper in question, (Record, p. 21,) it would not tend to prove that he owed Ketcham.

V. *The paper produced, if genuine, does not prove how much Farrow owed Ketcham.*

This paper is very special. It does not admit that the account was due, but says it was presented, and Ketcham could produce vouchers for it, and he promises, if Congress allows the claim of Farrow & Harris, to pay, as far as it was right and just, if the government should leave it in his power to pay. This is really no admission or promise to pay. Everything depends upon what does not appear in the paper. It is not shown how much they claimed of Congress, nor that the amount appropriated in 1825 was as large as they demanded. From the subsequent law in 1832, it may be inferred that what they claimed had been allowed only in part.

VI. *The evidence does not show that supplies were furnished or services rendered under a contract with Farrow & Harris, or either of them, or that the claim presented is not within the provisions of the 3d section of the act of 1825, providing the condition of the bond to be given by Farrow.*

The act provides that the bond shall be conditioned that Farrow "shall appropriate the net proceeds of the personal property and the money to be received towards the payment of the debts contracted by Farrow & Harris, or either of them, or any other person or persons contracting under the said Farrow & Harris, for supplies furnished and services rendered in and about the erection of said fortification."

The act is limited to two objects—supplies furnished in constructing the fort and labor performed in its erection. Ordinarily, the word "supplies" means "grants of money by parliament to supply the exigencies of the government."—(See Bouvier, Jacob, and Tomlinson.) In the present instance it is synonymous with the word "materials," Congress intending to force Farrow to pay for the materials furnished for the fort and the labor bestowed upon it.

In the present case Ketcham states that he was a contractor to supply brick wanted for the construction of the fort, and he sets out a contract to that effect. If his claim was for brick thus furnished, or labor upon the fort, his claim might be included within the provisions of the condition required. But he makes no claim for brick furnished or labor performed on the fort. The claim presented is mostly for goods, wares, and merchandise, and not for materials furnished for the fort, nor for personal labor. Not an item is within his contract which he has set out, and under which he claims as a sub-contractor. A few items will show the character of his account against Farrow:

194 pairs of men's shoes, at \$1 50.....	\$291 00
2 boxes for same, at \$1.....	2 00
2 sets of harness, at \$15.....	30 00
1 anchor, 6 cwt., at 10 cents per pound.....	160 00
500 lbs. oakum, at 15 cents.....	75 00
57 cwt. 1 qr. 16 lbs. cordage at 12 cents.....	753 76

1 8 inch cable, 12 cwt. 0 qr. 0 lb., at 8 cents.....	107 52
15 fathoms 13-inch cable, 7 cwt. 2 qrs. 0 lb., at 9 cents..	67 29
2 kegs twist tobacco, 288 lbs., at 40 cents.....	115 20
1 keg hard, 135 lbs., at 30 cents.....	39 90
1 bbl. roll tobacco, 168 lbs., at 30 cents.....	58 80
Ship Orris, at \$1,600.....	1,600 00
For repairing, agreed to be paid on her.....	348 75
For 160 passengers from New York to Mobile, at \$30....	4,800 00
Wages for 100 men two months, average \$30 each.....	6,000 00
Board for the same, \$12 each, two months.....	2,400 00
Compensation for my own services.....	3,000 00
Discount on \$5,000 received.....	75 00
Expenses for going to Virginia after the same.....	80 00
1 dozen fancy chairs, delivered at Red Bluff, at \$3 50....	42 00
Cash paid Seth Belknap.....	300 00
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None of these charges are within the contract, and none are for things shown to have been materials for or labor on the fort. There is no evidence that Ketcham paid the wages of 100 men, working on the fort for two months. No part of this whole account comes within the provisions of the act. It therefore follows that the case, as proved, does not entitle him to what he claims, if there were no other objections to it. The claimant was not entitled to demand that a suit should be instituted by the Secretary of War upon the bond. No suit could have been sustained, and the institution of one would have been worse than useless. Not being provided for in the act, and entitled to have a suit instituted, he can recover nothing here.

VII. *Ketcham not having required the Secretary of War to institute a suit upon Farrow's bond, he has no cause of complaint for the non-performance of any duty required by law.*

The rights of the claimant, if any he has, grow out of a statute, and that must be strictly pursued to entitle him to anything under it. The provision of this part of the act is, "and it shall be the duty of the Secretary, upon the application of any of the parties interested therein, and upon satisfactory proof of the failure of the said Nimrod Farrow to fulfil the conditions thereof, to cause the said bond to be prosecuted for the benefit of the party or parties making such application, and of such other person or persons as may have an interest in said bond."

There is no evidence that the claimant ever made application to the Secretary, with any evidence of his rights, requesting him to prosecute said bond. He has omitted all proof of the facts which form the condition upon which the Secretary was authorized to act. Without such application and satisfactory proof of Farrow's failure to perform the conditions of his bond, the Secretary would have been guilty of an offence to have caused a prosecution of the bond, and, on proof of the

fact, any suit instituted would have been defeated, because of his want of authority to sue. This is a fatal defect in the claimant's case, and must defeat his claim.

VIII. If Ketcham called upon the Secretary to institute a suit upon Farrow's bond, if no proof of his claim was presented, the Secretary could not order a suit, and if proof was presented, it rested with the Secretary to decide whether it was satisfactory, and his decision thereon was final and conclusive.

The Secretary was authorized to sue when the claimant performed certain conditions. *First*, he must make application to the Secretary. *Second*, he must show that he had an interest in the condition of the bond. *Third*, he must show to the Secretary, by proof satisfactory to him, that Farrow had failed to fulfil the conditions of his bond.

From necessity, it devolved upon the Secretary to determine these questions. No one else could do so, and hence his determination, whether mistaken or not, was final and conclusive, and is not the subject of review here or elsewhere. It is true, if he acted fraudulently, the claimant might have an action against the Secretary for his damages. In such a case the question would be one of fraud or good faith. But in every other category the decision of the Secretary would be final and conclusive. If Ketcham in fact did present his request and evidence, and the Secretary refused to act, it is clear that it must have been because he did not make out a case entitling him to require a suit to be brought.

The question of satisfactory proof of the failure of Farrow to perform the condition of his bond involved the consideration whether Ketcham's claim came within the provisions of the act, as being for supplies and labor for the construction of the fort. He necessarily determined this question among others, and his adjudication is conclusive. This court cannot go into the questions before him for the purpose of correcting errors, if any, committed by him when Congress conferred upon him the power of deciding, and if he did do so, that closes the matter. If the claimant did not present his proofs, then the Secretary fell into no error. In either event the present claim cannot be maintained.

IX. If this case is brought to recover for a misfeasance or non-feasance of the Secretary of War, in the discharge of his official duties, it will not lie, because the government is not responsible for such misfeasance or non-feasance.

If the Secretary performed his duty in a wrongful, fraudulent, or malicious manner, or fraudulently or maliciously refused to perform his duty, it might subject him to liability to the party injured, but could not subject the government to damages therefor. The latter is liable for his legal, and not for illegal acts. No recovery can be had in this case, because the wrong, if any, was one not authorized by the government, but the liability, if any, rests upon him who did the wrong.

X. *This court has no jurisdiction over this case as presented, because the damages, if any were sustained, result from the non-feasance of a public officer, is not within the class of cases that the statute authorizes this court to hear and determine.*

The sole ground of complaint in this case seems to be, that the Secretary of War omitted to perform a duty enjoined upon him by law, and that in consequence thereof the claimant failed to collect a debt. It follows, that it does not come within the provisions of the statute organizing this court, which limits its jurisdiction to cases where rights are claimed under a statute, a regulation of a department, or a contract, expressed or implied.

R. H. GILLET, *Solicitor.*

AUGUST 21, 1858.

IN THE COURT OF CLAIMS.

July 18, 1859.

ISRAEL KETCHAM vs. THE UNITED STATES.

Judge BLACKFORD delivered the opinion of the court.

This case was referred to this court by a resolution of the House of Representatives of March 3, 1855.

The petition alleges that Messrs. Farrow & Harris entered into a contract in 1818 with the United States to construct a fort on Dauphin island, Mobile bay; that in 1819 they, Farrow & Harris, made a contract with the claimant by which the latter was to furnish to the former labor and materials towards the building of said fort; that labor and materials were accordingly furnished by the claimant to said contractors, under his contract, to the amount of \$22,528 55, of which sum \$5,000 were paid to him, leaving a balance of \$17,528 55 due to him from the said contractors.

The petition further states that the erection of said fort was subsequently abandoned by the government; that in 1825 an act of Congress was passed for the benefit of said Farrow & Harris in the premises, and of the persons contracting under said Farrow & Harris for supplies and services in and about the erecting of the said fort; that by that act certain duties, which will be hereinafter stated, were prescribed to the Secretary of War relative to the matters embraced in it, which duties he failed to perform; and that in consequence of such failure the claimant has been unable to collect his debt from said Farrow & Harris, who are insolvent.

The first point to be ascertained is, whether Farrow & Harris, or either of them, were indebted to the claimant as he alleges.

We are satisfied from the evidence that Farrow & Harris, or one of them, were indebted to the claimant, but as to the particular amount of the debt we are not informed. To show that the sum claimed by

the petition was due from Farrow, the claimant produces a copy of an account of various items, which, after deducting a credit of \$5,000, leaves a balance of \$17,528 55. At the foot of that account there is a writing rather singular in form, which is alleged to be an acknowledgment of said balance being due, and which purports to be signed by Nimrod Farrow. There is an affidavit of the claimant stating that the originals of said account and writing annexed are lost, and that the copies of both are correct. This affidavit of the claimant is admissible to show the loss of the originals but not to prove the correctness of the copies or the execution of the writing annexed to the account. This alleged copy of said acknowledgment not being proved to be a true copy, and the execution of the original not being proved, is not admissible evidence, and the account of items is not proved by it. Again, to prove said balance of \$17,528 55 to be due, a copy of a paper having the name "William Thomas" at the bottom is offered in evidence. This copy has also, below the said name, the following words: "Sworn to before H. Meigs, December 9, 1833." In order to make this copy evidence, a paper respecting it, purporting to be signed "H. Meigs, of the 16th Congress of the U S., now Rec. Sec. of the Am. Inst.," which is admitted as evidence by the deputy solicitor, is introduced; but as H. Meigs is not named in the jurat as an officer of any kind, and merely calls himself in the subsequent paper recording secretary as aforesaid, the paper having the name "William Thomas" attached to it cannot be received as evidence. So that, though we think that there is some amount due from Farrow & Harris, or from one of them, to the claimant, yet we are not furnished with the means of determining how much is due.

But supposing that a certain sum is shown to be due to the claimant from Farrow & Harris, or from one of them, we are then to examine whether the United States, on account of any default of the Secretary of War, are liable to pay for it.

It appears that in July, 1818, Richard Harris contracted with the United States to erect a fort on Dauphin island, at the entrance of Mobile bay; that in November of the same year Nimrod Farrow became jointly concerned with Harris in the contract; that in 1819, Israel Ketcham, the present claimant, resident in New York, in conformity to an agreement between him and Farrow & Harris, employed a large number of workmen and transported them, with provisions, materials, &c., purchased by him, to Dauphin island aforesaid, to aid in the construction of said fort—Farrow & Harris having advanced to him \$5,000 on his contract; that in 1821, Congress, having previously appropriated large sums of money for the building of said fort, and after much work had been done on it, refused to make any further appropriations on the subject, and the building of the fort was consequently abandoned; that the government, soon after such abandonment, sued Farrow & Harris for a balance alleged to be due from them on the accounts relative to the work they had done on the building and the money advanced to them by the government; that whilst such suit was pending—to wit, on the 3d of March, 1823—an act of Congress was passed authorizing the Secretary of War, by some suitable person or persons, to ascertain the facts relative to the

building of said fort, &c.; that the Secretary thereupon appointed Mr. Swann, of Alexandria, to attend to the business, who made a report very favorable to Farrow & Harris, the contractors; that soon after this report was made—to wit, on the 3d of March, 1825—Congress passed the following act on the subject:

“*Be it enacted, &c.*, That the Secretary of War cause to be withdrawn and dismissed a suit which is now pending by the United States against Nimrod Farrow and his securities for money advanced him by the United States as one of the contractors for erecting a fort on Dauphin island; and that the bond on which the suit was instituted be cancelled.

“SEC. 2. That the Secretary of War cause to be delivered up and released, by proper conveyances, to Nimrod Farrow, contractor for erecting a fort on Dauphin island, all liens or securities which the United States may hold on property, real or personal, of the said contractor.

“SEC. 3. That the proper accounting officers of the Treasury Department pay unto Nimrod Farrow, contractor for erecting a fort on Dauphin island, or to his legal representatives, the sum of seventy-three thousand seven hundred and forty-seven dollars and seventy-eight cents: *Provided*, That the said Nimrod Farrow, before he shall receive any of the personal property to be delivered as aforesaid, and before he shall be entitled to receive the money above mentioned, shall enter into a bond to the Secretary of War, with security to the acceptance of said Secretary, in the penal sum of one hundred and twenty thousand dollars, conditioned that the said Nimrod Farrow shall appropriate the net proceeds of the personal property and the money so to be received towards the payment of the debts contracted by Farrow & Harris, or either of them, or any other person or persons contracting under said Farrow & Harris, for supplies furnished and services rendered in and about the erection of said fortification; * * * which bond shall be deposited with the Secretary of War; and it shall be the duty of the said Secretary, upon the application of any of the parties interested therein, and satisfactory proof of the failure of the said Nimrod Farrow to fulfil the condition thereof, to cause the said bond to be prosecuted for the benefit of the party or parties making such application, and of such other person or persons as may have an interest in said bond.

“SEC. 4. That an inventory be taken of such personal property as shall be returned to the said Farrow under the provisions of this act, and an estimate of its value be made under such regulations as the Secretary of War may prescribe; and that there be paid unto the said Farrow such difference as exists between the value of the personal property at the time the same was taken possession of by the government and its return, together with the value of the personal property destroyed or lost while the same was in possession of the government, except the same was lost or destroyed by the act of God.

“SEC. 5. That the several sums to be paid by the provisions of this act be paid out of any money in the treasury not otherwise appropriated.”—(6 Stat. L., 331.)

The claimant, in his petition and in his brief, alleges that the

Secretary of War failed to discharge his duty, under said act of 1825, in two particulars, to the claimant's prejudice. The first of these alleged breaches of duty is, that the Secretary refused to deliver to the claimant the personal property mentioned in the said act. The only evidence relied on to sustain this allegation is an *ex parte* affidavit of Gilbert C. Russell. That affiant states that "the Secretary of War, in accordance with the requirements of the act, (of 1825,) dismissed a suit then pending against Harris & Farrow and paid the \$73,000, but absolutely refused to give an order for a return of the property, out of the proceeds of which their debts were to be paid." There is no doubt but that the Secretary did not deliver the property in question to Farrow; but there is a good reason for his not doing so, which reason is, that the property alluded to was not nor ever had been in the possession of the United States. This fact is shown by the following communications:

"ENGINEER DEPARTMENT, May 2, 1825.

"SIR: In pursuance of your directions to state such information as may be possessed by this department respecting the property referred to in the fourth section of the act of Congress, approved on the 3d of March last, 'for the relief of Nimrod Farrow and Richard Harris,' I have the honor to make the following report, in which, to explain the true relation in which the government stands to that property, it will be necessary to detail the circumstances which produced that relation:

"Messrs. Farrow & Harris were the joint owners of the contract for erecting a fort on Dauphin island, the former having become possessed of one-half of that contract by purchase from the latter, who was the original sole contractor. On the 10th of April, 1820, an agreement was entered into between them and General Turner Starke, by which was conveyed to the latter the right of property in one-half, and the exclusive possession, management, and control of the whole of the contract until it should be completed. One of the conditions upon which General Starke consented to become interested in the contract was, that such a disposition should be made of the property then appertaining to it as would prevent its being alienated or diverted from its appropriate uses. To this end it was proposed that it should be conveyed to the government as collateral security for advances which had been granted to facilitate the prosecution of the contract, with the understanding that it should be retained in possession by General Starke, and applied to the fulfilment of the contract. Accordingly, on the 10th of April, 1820, the same day on which the agreement adverted to was entered into, Messrs. Farrow & Harris executed a deed of trust to Captain Gadsden, as the agent of the government, conveying to him the property in question, which was particularly set forth and described in the schedule annexed to it. General Starke was recognized by the government as the agent of Farrow & Harris with a view of his having the sole management of the contract, in pursuance of the arrangement just stated. It is believed the contractors put him in possession of all the property connected with the contract, and that Captain Gadsden, although it was conveyed in

trust to him as the agent of the government, never had actual possession of it, and never was intended to have it, as has been explained. Captain Gadsden transmitted to this department a copy of the deed of trust, but not of the schedule of the property which was annexed to it, except that portion of it which consisted of slaves. A transcript (of that copy) is enclosed herewith. It will be perceived that it contains only a general recapitulation of the property. The original deed was turned over by Captain Gadsden to Captain De Russy, on being relieved by him in the superintendence of the fortifications on the Gulf of Mexico.

"The property, it is presumed, is at this time in the possession of the representatives of General Starke, who has been dead for some time. The negroes were removed, it is believed, to the plantation of General Starke, in Alabama, shortly after the suspension of the operations of the contract, produced by the refusal of Congress to appropriate money for carrying them on, and were to be kept there until the ultimate decision of Congress should be known. That decision was adverse to the contractors, and suits were brought against them and their securities; and, consequently, the further agency of this department in the transactions of the contract ceased.

"Respectfully submitted,

"ALEX. MACOMB,

"Major General and Chief Engineer.

"Hon. JAMES BARBOUR,

"Secretary of War."

(5 vol. Ex. Papers, 19 Cong., 1st sess., H. R., No. 104.)

Mr. Burch, assistant quartermaster, who, on the 2d of May, 1825, was appointed by the Secretary of War to examine into and report the facts relative to said property, made his report on the 31st of December, 1825. The following is an extract from that report:

"It appears from the testimony of Colonel Gadsden and Major De Russy, supported by the deed of trust itself and the agreement entered into between Farrow & Harris, and Turner Starke, on the 10th day of April, 1820, that the property was never in the possession of the United States; but that the deed of trust was intended to have effect solely for the advantage of the contractors, leaving the property at the disposal of themselves and of Starke, their legally authorized agent for carrying on the work and constructing the fortification. The testimony of J. F. Ross states that the slaves came into his possession, as the administrator on Starke's estate, after his decease, and are still in his possession. Moreover, the agreement between Farrow & Harris, and Starke, of the 10th of April, 1820, and the deed of conveyance executed on the 1st day of August, 1820, (1822,) show conclusively that Farrow & Harris had ceased altogether to be owners of any part of the property, which it was contemplated, by the law of the 3d March last, should be returnable to them, long previous to the passage of that law."—(5 vol. Ex. Papers, *supra*, No. 104.)

The above documents show that said property was never in the possession of the United States. There was a deed of trust for it to Captain Gadsden, as an agent of the United States, dated April 10,

1820, but the contractors and their agent kept possession of the property and used it in the same manner after the execution of the deed as they had done before. Whatever lien on the property in favor of the government may have been created by the deed of trust was released. Such release of the lien is admitted by Farrow in two different parts of his memorial to the Secretary of War of December 17, 1828.—(2 vol. Ex. Papers, 20th Cong. 2d sess., No. 36, pp. 5, 6.) The present claim, therefore, so far as it is founded on the breach of duty of the Secretary of War in not delivering said property to Farrow, is without foundation.

The second breach of duty alleged to have been committed by the Secretary of War to the claimant's prejudice is, that he failed to sue on the bond given under said act of 1825 by Farrow and his sureties. The 3d section of that act makes it the duty of the Secretary of War, on the application of any of the parties interested in the bond, and satisfactory proof of the failure of Farrow to fulfil the condition thereof, to cause the same to be prosecuted. The allegation on this subject in the petition is, that soon after said act of 1825 passed, the claimant caused an application to be made on his behalf to the Secretary of War to institute a suit on said bond against the principal and sureties in the same for his benefit, and at the same time filed with the Secretary the evidence of his claim as a sub-contractor of Farrow & Harris; but the Secretary neglected and refused to sue on the bond, &c. The only evidence relied on to prove this alleged application is an *ex parte* affidavit of Walter Case, made in 1851, which states that the affiant "knows that the Hon. Parmenio Adams, a member of Congress, acted as agent for said Israel Ketcham after said act of 1825 was passed, providing for the pay of sub-contractors as aforesaid under the said Farrow & Harris, because the said Parmenio wrote to this deponent at Newburg from Washington, in the absence of the said Ketcham, saying that he had applied to Mr. Barbour, the Secretary of War, in behalf of said Ketcham, to have suits brought against the said Nimrod Farrow and his sureties in behalf of the sub-contractors aforesaid, and that Mr. Barbour assured him that Ketcham should be paid." Now that is mere hearsay evidence, and is inadmissible. Mr. Adams, who was not under oath, informed the affiant so and so. No court of law or equity ever admits such evidence. But the mere application relied on, had it been proved, would not have answered the act of Congress. It was necessary to go further, and satisfy the Secretary that Ketcham was interested in the bond, on account of services rendered or supplies furnished, as mentioned in said act. It does not appear that the claimant, or any person for him, had satisfied the Secretary on that subject. There is evidence, to be sure, that on the 20th of July, 1826, the Secretary sued on the bond in the circuit court of the District of Columbia; the suit being entitled, "The Secretary of War, use of Roland Clapp, vs. Gilbert C. Russell." That suit was discontinued in December, 1828, and the defendant, Russell, in his affidavit introduced as evidence by the present claimant, says that said Roland Clapp discontinued it. These facts show no default on the part of

the Secretary, relative to the bond, of which the claimant can complain.

Our opinion is, for the reasons above given, that the claimant is not, according to law or the principles of justice and equity, entitled to recover in this case.